Dato' Seri Muhammad Sanusi bin Md Nor v Datuk Seri Saifuddin Nasution bin Ismail

HIGH COURT (ALOR SETAR) — CIVIL SUIT NO KA-23CY-1–08 OF 2023
MOHAMMAD JOHAN LEE J
19 OCTOBER 2025

Tort — Defamation — Defamatory statement — Statements by politician — Home minister made statements during political campaign involving Chief Minister of Kedah — Home minister made statement regarding serious financial misgovernance of funds and contravention of funding rules by Chief Minister — Home minister made statement labelling Chief Minister of Kedah as 'pencuri' of rare earth element (REE) — Whether statements were defamatory — Whether defamatory statements had been published by home minister — Whether defamatory statements referred to Chief Minister of Kedah — Whether defences of justification, fair comment and qualified privilege established — Whether claims for general, aggravated, and exemplary damages should be granted

At the material time, the plaintiff was the Chief Minister of Kedah whilst the defendant was the home minister in the Federal Government. In the present case, the plaintiff sued the defendant for defamation in relation to two statements made by the defendant on 14 July 2023 and 15 July 2023. On 14 July 2023, the defendant had made a statement to the public regarding the usage of the funds allocated for Malaysian Road Records Information System ('MARRIS') by the plaintiff whereby it was alleged that there was serious financial misgovernance and contravention of funding rules by the plaintiff ('the MARRIS statement'). On 15 July 2023, during an election rally, the defendant made another statement to the public labelling the plaintiff as 'pencuri' of the rare earth element ('the REE') in Kampung Chong, Sik, Mukim Sik, Kedah ('the REE statement'). In making the REE statement, the defendant had relied upon a compound/fine letter issued by the Kedah Department of Land and Mines dated 4 October 2022 but based on the evidence, DW1 who signed the letter stated that the letter was never issued to the intended recipient, ie the Menteri Besar Incorporated (MBI), but it was retracted and destroyed. In defence, the defendant raised the defences of justification, fair comment and qualified privilege. The plaintiff argued that both statements had fulfilled the three requirements of defamation, and all defences raised were negated by malice. The issues that arose for the court's determination were: (a) whether both statements had been published by the defendant; (b) whether both statements referred to the plaintiff; (c) whether both statements were defamatory; and (d) whether the defences of justification, fair comment and qualified privilege were established.

Held, allowing the plaintiff's claims regarding the REE statement and the MARRIS statement:

(1) With respect to the publication of both statements, the defendant did not dispute that the statements were published but the defendant argued that they were published by third parties via their own platforms, not by his own effort. The plaintiff on the other hand relied on the principle of expected publication. The court agreed with the plaintiff that giving an interview or statement to press reporters with the intention that the defamatory substance be published made the individual liable for libel, as he authorised the publication which subsequently was made in the newspaper itself. Thus, merely publishing the defamatory statement to a third party, specifically media officials, was sufficient to prove the element of publication based on these established laws (see paras 27 & 87–90).

(2) It was undisputed that both statements referred to the plaintiff per se, but it was in dispute as to in which capacity, personal or official. In relation to the REE statement, the defendant had agreed under cross-examination that the many phrases ie, 'kamu', 'Sanusi', 'Menteri Besar', 'Pengerusi Perbadanan Menteri Besar', all referred to the plaintiff directly. Hence, the court found and unequivocally affirmed that the REE statement referred to the plaintiff. As regard the MARRIS statement, the court was of the view that the plaintiff was not disentitled in any way to bring an action to protect his reputation whether in his personal or professional capacity; it did not make a difference. Thus, it was clear that it remained undisputed that the MARRIS statement referred to the plaintiff (see paras 25–26 & 97).

(3) The court found that the REE statement was defamatory in its ordinary and natural meaning, by way of labelling the plaintiff as a 'pencuri' conveyed criminal wrongdoing, lowered his reputation in the eyes of reasonable persons, and exposed him to contempt and ridicule. The court rejected the defendant's defences of justification and fair comment in respect of the REE statement. The one and only key document relied upon was retracted or was never issued, and the defendant had displayed reckless indifference to the truth. Express malice was inferred from the selective presentation of half-truths and the timing of the remarks during a political campaign. Further, qualified privilege did not attach to the REE statement, as the occasion — an election rally — lacked any duty or common interest between speaker and audience that would protect defamatory publications (see paras 41–44, 47–49, 58, 85 & 153–155).

(4) In relation to the MARRIS statement, the court found that the phrase 'menyalahi semua tata kelola kewangan Kerajaan' clearly imputed the plaintiff had committed serious financial misgovernance, where the defendant drove the point home by citing the Auditor-General in his statement and ending with the sentences 'tidak boleh dilakukan. Itu isu

governance'. Further, it was established that the MARRIS statement imputed that the plaintiff's actions were non-compliant with the law, specifically rules and regulations on government funds and its allocation and was improper. The court found that the repeated allegations of serious financial misgovernance and contravention of funding rules by the plaintiff exceeded permissible political critique and met the threshold for defamation. Therefore, the court opined that the MARRIS statement was also defamatory. With regard to the defence raised by the defendant, it was trite that both justification and fair comment shared the element of truthfulness being proven. Considering that none of the facts stated in the MARRIS statement by the defendant had been proven true on the balance of probabilities, neither defence was successful (see paras 106, 113, 143 & 156).

(5) Premised on the facts and circumstances of the present case, the court found that it was appropriate to grant general, aggravated, and exemplary damages. General damages were awarded as compensation to the plaintiff for damage to his reputation and as vindication. Aggravated damages were awarded because the defendant's conduct aggravated the injury to the plaintiff. Exemplary damages were awarded as punishment and deterrence — it was the minimum necessary to mark the court's disapproval and effectively deters. However, for the ease of reference, the courts could also award a global sum of damages which shall cover all of these three damages (see paras 150).

(6) Order: the court awarded the plaintiff RM300,000 as global damages for each of the defamatory statements, and thus global damages of RM600,000 in total in order to vindicate the plaintiff's reputation, compensate his injury, and deter future misconduct. The court further awarded the plaintiff the costs of RM70,000 as the costs for the present action. In addition, the court ordered, inter alia, that: (a) the defendant shall make open apology to the plaintiff; (b) the defendant shall cause any videos related to the defamatory statements to be withdrawn within 48 hours from the date of judgment; (c) the defendant gives a clear and unconditional undertaking not to publish any statement related either directly or indirectly to the same issues as in both defamatory statements; (d) a permanent injunction to restrain the defendant from publishing any statement related either directly or indirectly to the same issues as in both defamatory statements; and (e) interest at the rate of 5% per annum on the damages from the date of filing of the present action until full settlement, which must be paid by the defendant to the plaintiff for the purpose of the plaintiff giving to any public welfare center and/or institution to be determined by the plaintiff as a charitable donation (*infaq*) to those in need (see paras 152 & 158–159).

A **[Bahasa Malaysia summary**

Pada masa yang material, plaintif merupakan Menteri Besar Kedah manakala defendan merupakan Menteri Dalam Negeri dalam Kerajaan Persekutuan. Dalam kes semasa, plaintif menyaman defendan atas dakwaan fitnah berhubung dua pernyataan yang dibuat oleh defendan pada 14 Julai 2023 dan 15 Julai 2023. Pada 14 Julai 2023, defendan telah membuat pernyataan kepada orang ramai mengenai penggunaan dana yang diperuntukkan untuk Malaysian Road Records Information System ('MARRIS') oleh plaintif di mana didakwa terdapat salah tadbir urus kewangan yang serius dan pelanggaran peraturan pembiayaan oleh plaintif ('pernyataan MARRIS'). Pada 15 Julai 2023, semasa perhimpunan pilihan raya, defendan membuat satu lagi pernyataan kepada orang ramai dengan melabelkan plaintif sebagai 'pencuri' unsur nadir bumi ('REE') di Kampung Chong, Sik, Mukim Sik, Kedah ('pernyataan REE'). Dalam membuat pernyataan REE, defendan telah bergantung pada surat kompaun/denda yang dikeluarkan oleh Jabatan Tanah dan Galian Kedah bertarikh 4 Oktober 2022 tetapi berdasarkan keterangan, DW1 yang menandatangani surat tersebut menyatakan bahawa surat tersebut tidak pernah dikeluarkan kepada penerima yang dimaksudkan, iaitu Menteri Besar Incorporated (MBI), tetapi ia telah ditarik balik dan dimusnahkan. Sebagai pembelaan, defendan membangkitkan pembelaan justifikasi, komen yang adil dan keistimewaan bersyarat. Plaintif berhujah bahawa kedua-dua pernyataan tersebut telah memenuhi tiga syarat fitnah, dan semua pembelaan yang dibangkitkan telah dinafikan oleh niat jahat. Isu-isu yang timbul yang perlu diputuskan oleh mahkamah adalah: (a) sama ada kedua-dua pernyataan tersebut telah diterbitkan oleh defendan; (b) sama ada kedua-dua pernyataan tersebut merujuk kepada plaintif; (c) sama ada kedua-dua pernyataan tersebut bersifat fitnah; dan (d) sama ada pembelaan justifikasi, komen yang adil dan keistimewaan bersyarat telah dibuktikan.

Diputuskan, membenarkan tuntutan-tuntutan plaintif berkenaan pernyataan REE dan pernyataan MARRIS tersebut:

(1) Berkenaan dengan penerbitan kedua-dua pernyataan tersebut, defendan tidak mempertikaikan bahawa pernyataan-pernyataan tersebut telah diterbitkan tetapi defendan berhujah bahawa ia telah diterbitkan oleh pihak ketiga melalui platform mereka sendiri, bukan dengan usahanya sendiri. Sebaliknya, plaintif bergantung pada prinsip penerbitan yang dijangkakan. Mahkamah bersetuju dengan plaintif bahawa memberi temu bual atau pernyataan kepada wartawan akhbar dengan niat agar bahan fitnah tersebut diterbitkan menjadikan individu tersebut bertanggungjawab atas fitnah, kerana dia membenarkan penerbitan yang kemudiannya dibuat dalam akhbar itu sendiri. Oleh itu, hanya menerbitkan pernyataan fitnah kepada pihak ketiga, khususnya pegawai-pegawai media, sudah memadai untuk membuktikan elemen

penerbitan berdasarkan undang-undang yang telah ditetapkan ini (lihat perenggan 27 & 87–90).

(2) Defendan tidak mempertikaikan bahawa kedua-dua pernyataan tersebut merujuk kepada plaintif itu sendiri, tetapi defendan mempertikaikan tentang kapasiti yang mana, peribadi atau rasmi. Berhubung dengan pernyataan REE, defendan telah bersetuju semasa pemeriksaan balas bahawa frasa-frasa 'kamu', 'Sanusi', 'Menteri Besar', 'Pengerusi Perbadanan Menteri Besar', semuanya merujuk kepada plaintif secara langsung. Oleh itu, mahkamah mendapati dan dengan tegas mengesahkan bahawa pernyataan REE tersebut merujuk kepada plaintif. Berkenaan dengan pernyataan MARRIS, mahkamah berpendapat bahawa plaintif tidak dinafikan dalam apa jua cara untuk membawa tindakan bagi melindungi reputasinya sama ada dalam kapasiti peribadi atau profesionalnya; ia tidak memberi perbezaan. Oleh itu, adalah jelas bahawa tidak dapat dipertikaikan bahawa pernyataan MARRIS tersebut merujuk kepada plaintif (lihat perenggan 25–26 & 97).

(3) Mahkamah mendapati bahawa pernyataan REE tersebut adalah fitnah dalam makna biasa dan semula jadinya, dengan cara melabelkan plaintif sebagai 'pencuri' yang menggambarkan salah laku jenayah, merendahkan reputasinya di mata orang yang munasabah, dan mendedahkannya kepada penghinaan dan ejekan. Mahkamah menolak pembelaan defendan tentang justifikasi dan komen yang adil berkenaan dengan pernyataan REE tersebut. Satu-satunya dokumen utama yang menjadi sandarannya telah ditarik balik atau tidak pernah dikeluarkan, dan defendan telah menunjukkan sikap acuh tak acuh yang semberono terhadap kebenaran. Niat jahat yang nyata telah disimpulkan daripada penyampaian separuh kebenaran yang terpilih dan masa pernyataan tersebut dibuat iaitu ketika kempen politik. Tambahan pula, keistimewaan bersyarat tidak terpakai kepada pernyataan REE tersebut, kerana majlis tersebut — perhimpunan pilihan raya — tidak mempunyai apa-apa kewajipan atau kepentingan bersama antara penceramah dan penonton yang akan melindungi penerbitan fitnah tersebut (lihat perenggan 41–44, 47–49, 58, 85 & 153–155).

(4) Berhubung dengan pernyataan MARRIS, mahkamah mendapati bahawa frasa 'menyalahi semua tata kelola kewangan Kerajaan' jelas menunjukkan plaintif telah melakukan salah tadbir urus kewangan yang serius, di mana defendan menekankan perkara tersebut dengan memetik Ketua Audit Negara dalam pernyataannya dan diakhiri dengan ayat 'tidak boleh dilakukan. Itu isu governance'. Tambahan pula, telah dibuktikan bahawa pernyataan MARRIS tersebut membayangkan bahawa tindakan plaintif tidak mematuhi undang-undang, khususnya peraturan dan undang-undang mengenai dana kerajaan dan peruntukan kerajaan dan adalah tidak wajar. Mahkamah mendapati bahawa dakwaan

berulang tentang salah tadbir urus kewangan yang serius dan pelanggaran peraturan pembiayaan oleh plaintif melampaui kritikan politik yang dibenarkan dan memenuhi ambang fitnah. Oleh itu, mahkamah berpendapat bahawa pernyataan MARRIS tersebut juga bersifat fitnah. Berkenaan dengan pembelaan yang dibangkitkan oleh defendan, adalah jelas bahawa kedua-dua pembelaan justifikasi dan komen yang adil kedua-duanya memerlukan pembuktian elemen kebenaran. Memandangkan tiada satu pun fakta yang dinyatakan dalam pernyataan MARRIS oleh defendan telah terbukti benar di atas imbangan kebarangkalian, maka, kedua-dua pembelaan tersebut gagal dibuktikan (lihat perenggan 106, 113, 143 & 156).

(5) Berdasarkan fakta dan keadaan kes semasa, mahkamah mendapati bahawa adalah wajar untuk memberikan ganti rugi am, ganti rugi teruk dan ganti rugi teladan. Ganti rugi am diberikan sebagai pampasan kepada plaintif atas kerosakan reputasinya dan sebagai 'vindication'. Ganti rugi teruk diberikan kerana kelakuan defendan telah memburukkan lagi kecederaan yang dialami oleh plaintif. Ganti rugi teladan diberikan sebagai hukuman dan pencegahan — ia adalah sesuatu yang minimum yang diperlukan untuk menandakan penolakan mahkamah dan secara berkesan mencegah. Walau bagaimanapun, untuk memudahkan rujukan, mahkamah juga boleh memberikan sejumlah ganti rugi global yang akan meliputi ketiga-tiga ganti rugi ini (lihat perenggan 150).

(6) Perintah: mahkamah menganugerahkan plaintif RM300,000 sebagai ganti rugi global untuk setiap pernyataan fitnah tersebut, dan dengan itu ganti rugi global sebanyak RM600,000 secara keseluruhan untuk mempertahankan reputasi plaintif, membayar ganti rugi kecederaannya, dan mencegah salah laku pada masa hadapan. Mahkamah selanjutnya menganugerahkan plaintif kos sebanyak RM70,000 sebagai kos bagi tindakan semasa. Di samping itu, mahkamah memerintahkan, antara lain, bahawa: (a) defendan hendaklah membuat permohonan maaf secara terbuka kepada plaintif; (b) defendan hendaklah menyebabkan apa-apa video yang berkaitan dengan pernyataan-pernyataan fitnah tersebut ditarik balik dalam tempoh 48 jam dari tarikh penghakiman; (c) defendan memberikan aku janji yang jelas dan tidak bersyarat untuk tidak menerbitkan apa-apa pernyataan yang berkaitan, sama ada secara langsung atau tidak langsung, dengan isu-isu yang sama seperti dalam kedua-dua pernyataan fitnah tersebut; (d) injunksi kekal untuk menghalang defendan daripada menerbitkan apa-apa pernyataan yang berkaitan, sama ada secara langsung atau tidak langsung, dengan isu-isu yang sama seperti dalam kedua-dua pernyataan fitnah tersebut; dan (e) faedah pada kadar 5% setahun ke atas ganti rugi dari tarikh pemfailan tindakan semasa sehingga penyelesaian penuh, yang harus dibayar oleh defendan kepada plaintif bagi tujuan plaintif memberi kepada

mana-mana pusat kebajikan awam dan/atau institusi yang akan ditentukan oleh plaintif sebagai derma amal (*infaq*) kepada mereka yang memerlukan (lihat perenggan 152 & 158–159).]

Cases referred to

Dato' Dr Low Bin Tick v Datuk Chong Tho Chin and other appeals [2017] 5 MLJ 413, FC (refd)
Dato' Sri Dr Mohamad Salleh bin Ismail & Anor v Mohd Rafizi bin Ramli [2022] 3 MLJ 758, FC (refd)
Dato' Sri Dr Mohamad Salleh bin Ismail & Anor v Nurul Izzah bt Anwar & Anor [2018] 3 MLJ 726, CA (refd)
Datuk Harris bin Mohamed Salleh v Abdul Jalil bin Ahmad & Anor [1984] 1 MLJ 97 (refd)
Datuk Husam bin Musa v The New Straits Times Press (M) Bhd & Ors [2014] 8 MLJ 370, HC (refd)
Derbyshire CC v Times Newspaper Ltd & Ors [1993] 1 All ER 1011, HL (refd)
DP Vijandran v Karpal Singh & Ors [2000] 3 MLJ 22, HC (refd)
Lee Kuan Yew v Derek Gwyn Davies & Ors [1990] 1 MLJ 390, HC (refd)
Lim Guan Eng v Mahiaddin bin Md Yassin [2024] MLJU 2904, HC (refd)
Lim Guan Eng v New Straits Times Press (M) Bhd [2017] 9 MLJ 622, HC (refd)
Lim Guan Eng v Ruslan bin Kassim and another appeal [2021] 2 MLJ 514, FC (folld)
Lim Lip Eng v Ong Ka Chuan (as a public officer of a society registered as Malaysian Chinese Association) [2022] 4 MLJ 454, FC (refd)
MGG Pillai v Tan Sri Dato Vincent Tan Chee Yioun & other appeals [1995] 2 MLJ 493, CA (refd)
Raub Australian Gold Mining Sdn Bhd (in creditors' voluntary liquidation) v Hue Shieh Lee [2019] 3 MLJ 720, FC (refd)
Seema Elizabeth Isoy v Tan Sri David Chiu Tat-Cheong [2024] 4 MLJ 260, FC (folld)
Syarikat Bekalan Air Selangor Sdn Bhd v Tony Pua Kiam Wee [2015] 6 MLJ 187, FC (refd)
Syed Nadri Syed Harun & Anor v Lim Guan Eng and other appeals [2019] 4 MLJ 259, CA (refd)
Tan Sri David Chiu Tat-Cheong v Seema Elizabeth Soy [2023] 3 MLJ 674; [2023] 6 CLJ 51, CA (refd)
Tuanku Nur Zahirah v Clare Louise Brown & Ors [2024] 3 MLJ 735, CA (refd)
Tuanku Nurzahirah v Clare Louise Brown (also known as Clare Rewcastle Brown) & Ors [2023] 11 MLJ 234, HC (refd)
Tun Datuk Patinggi Haji Abdul-Rahman Ya'Kub v Bre Sdn Bhd & Ors [1996] 1 MLJ 393, HC (refd)

Legislation referred to

Defamation Act 1957 s 8
Federal Constitution

National Land Code s 426(1)

Wan Rohimi Wan Daud (with Yusfarizal Yussof, Mohd Faizi Che Abu and Nur Iffah Hizwani Omar) (Faizi & Assoc) for the plaintiff.
Navpreet Singh (with William Leong and Sakina Siraj) (Nav & Co) for the defendant.

Mohammad Johan Lee J:

INTRODUCTION

[1] It is an apt reminder that, in the court of public opinion, one cannot 'have one's cake and eat it too': political speech must still bow to the truth, and where half-truths and malice masquerade as critique, they become the very stuff of defamation. Notwithstanding the political nature in it, the maker must be responsible should it involve defamatory element without valid defence.

FACTS AND DISPUTE

[2] The plaintiff was, at the material time, a prominent and senior politician who served as the Chief Minister of Kedah from 2020. He was also a state assembly member for the Kedah State Assembly for the Jeneri constituency. At the material time, the Plaintiff represented the political alliance of 'Perikatan Nasional' (PN) and was contesting as the incumbent for the Jeneri state assembly seat.

[3] The defendant, at the material time, was also a prominent and senior politician who was serving as the home minister in the Federal government. He was also a Senator in the Dewan Negara and at the same time, held a position as the Secretary-General in 'Parti Keadilan Rakyat' (PKR).

[4] For better context, the following events occurred on 14–15 July 2023, right at the start of the 2023 Kedah state elections campaign.

The MARRIS statement

[5] On 14 July 2023, the defendant attended an event called 'Majlis Penyerahan Zakat Wakalah' organised by the Ministry of Home Affairs at the Penang Police Contingent Headquarters. The defendant then met with media practitioners to provide statements and answers to any questions. During the meeting with the press, the defendant made the following impugned statement:

> Saya fikir dia perlu tumpukan kepada menguruskan negeri sebelum ini. Saya akan mulai hari ini akan mula mendedahkan satu per satu. Tapi saya tidak akan

menyerang peribadi dia. Saya akan sebut bagaimana lemahnya pengurusan kewangan kerajaan negeri Kedah, misalnya. Lemahnya tahap mana? Lemah sehingga peruntukan duit MARRIS yang sepatutnya mengikut perlembagaan, mengikut undang-undang, hanya boleh menjalankan aktiviti menyelenggara jalan raya seluruh negeri Kedah. Jumlahnya [RM]1.6 bilion. Tapi apa yang Menteri Besar Sanusi buat? Ya. Dia gunakan duit MARRIS itu untuk tujuan pembangunan, yang menyalahi semua tata kelola kewangan kerajaan; yang bercanggah dengan maksud duit MARRIS itu, sepertimana yang dinyatakan dalam Perlembagaan Persekutuan, sebab ia pemberian wajib Kerajaan Persekutuan.

Dan akibatnya, audit negara, Ketua Audit Negara, menegur kecacatan dari segi pengurusan kewangan.

Ya. Dan biasanya, negeri yang mengamalkan perkara seperti ini adalah kerana kutipan hasil yang sangat kecil. Kutipan hasil kecil kerana dia bermain politik, dia tak memerintah negeri. Dia bermain politik. Jadi hasilnya sekitar [RM]470-an juta.

Tapi bila dia menerima dana MARRIS, peruntukan tetap mengikut Perlembagaan oleh Kerajaan Persekutuan yang berjumlah [RM]1.6 bilion, dia malah menggunakan sebahagian duit itu untuk tujuan pembangunan; sepatutnya, penyelenggaraan jalan raya.

Kerana itu, Ketua Audit Negara tegur; kalau dari segi pentadbiran kewangan, pegawai kerajaan patut dikenakan surcaj.

Dan kerana itu, dia telah meminta dengan Menteri Kewangan supaya kerajaan Kedah dibenarkan untuk memindahkan duit MARRIS kepada akaun pembangunan.

Dan kesemua ulasan oleh penasihat undang-undang termasuk penasihat undang-undang negeri menyatakan perkara itu tidak boleh berlaku. Tidak boleh dilakukan. Itu isu *governance.* Dia pemimpin parti Islam, dia patut tahu tata kelola yang betul. Ada — negara ini ada disiplin dalam menguruskan. Dan biasanya negeri yang buat begini adalah kerana hasilnya kecil. Hasil kecil kerana dia lebih sibuk bermain politik.

Dia cakap benda-benda besar. Dia cakap tentang tambah laut di Langkawi. Dia cakap tentang nak bina lapangan terbang. Dia cakap tentang nak ambil balik Pulau Pinang. Tugas hakikinya menguruskan negeri. Itu tugasnya. Dia sibuk hina Raja. Dia sibuk memperlekehkan lawan politik.

Jadi hakikatnya adalah pengurusan kewangan negeri Kedah telah ditegur oleh Ketua Audit, dan bertindak atas teguran itu, kerajaan Kedah meminta supaya Menteri Kewangan memberikan kelulusan untuk mereka memindahkan akaun itu. Ini soal *creative accounting* yang sebenarnya tak boleh dilakukan. Itu adalah satu contoh. Saya akan sebut lagi beberapa perkara lain.

[6] The full quote of the defendant's speech spans a couple of pages and is not reproduced here in full (refer encl 20 at pp 110–111 for the full transcript).

[7] MARRIS is an acronym for 'Malaysian Road Records Information

A System', a federal database of every national road in Malaysia. The fact that the defendant had met with the press and gave this statement was agreed upon. It was also agreed that media practitioners had written, and published news reports based on the statement.

B *The REE statement*

[8] On 15 July 2023, the defendant was involved in a programme called 'Jelajah Perpaduan Madani dan Pelancaran Jentera Perpaduan Kedah'. This was a political campaign organised by the ruling political coalition at Padang Awam, Guar Chempedak, Yan in Kedah for the then-upcoming elections. During this programme, the defendant gave the following impugned speech:

C

> Saudara, kita masuk dan nak jatuhkan, dan nak ambil balik, ini pasal isu-isu tata kelola. Apa *elephant in the room* di Kedah? Isunya banyak. Saya pilih nadir bumi ('rare earth'). Baru sahaja polis buat beberapa tangkapan. Tangkapan ini belum habis lagi, saudara. Belum habis lagi, saudara.
>
> Sebab itu malam ini saya nak tanya dengan Sanusi Menteri Besar. Sebagai Menteri Besar, kamu juga pengerusi perbadanan Menteri Besar. Saya nak tanya, ada tak dapat surat daripada Datuk Fauzi Mustaffa, Pengarah Tanah dan Galian Kedah pada hujung tahun lepas? Surat yang menghendaki Menteri Besar Incorporated membayar kompaun lima ratus ribu kerana mencuri nadir bumi di Kampung Chong, Sik, di Kampung Chong, Sik, Kedah.
>
> Kamu Menteri Besar. Kamu Pengerusi MBI. Kamu dapat kompaun. Surat itu bertarikh 4 Oktober 2022 bersamaan 8 Rabiulawal. Dialamatkan kepada Pengerusi MBI. Kompaun di bawah seksyen 426(1), Kanun Tanah Negara 1965. Kejadian 2.30 petang pada 24 September 2022. Kejadian mencuri nadir bumi di Kampung Chong, Sik, Mukim Sik, Kedah. Yang ini, yang tandatangan surat itu, Datuk Fauzi Mustaffa.
>
> Saudara, kita lantik jadi Menteri Besar untuk urus negeri, bukan jadi pencuri.
>
> Saudara nampak? Itu baru permulaan, saudara, baru permulaan. Akan ada siri pendedahan dengan dokumen lengkap kerana kita percaya rakyat Kedah cerdik. *Never underestimate the wisdom of the Kedahan.* Yang ini yakinlah, saudara. Kita akan turun, terangkan dengan elok dalam siri-siri penerangan kita. Mudah-mudahan sasaran paling kurang 19 kerusi Dewan Undangan itu akan menjadi kenyataan.

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[9] Again, only the most relevant part of the speech reproduced here. The full quote of the defendant's speech spans a much longer length than above and is not reproduced in full (refer encl 20 at pp 113–115 for the full transcript).

I

[10] It is agreed that the speech was widely publicised by local media whether in print or online. The following are a list of publications of the speech:

(a) local mainstream media:

(i) *Berita Harian* — in print and online on the same date;

(ii) *Utusan Malaysia* — in print and online on the following day; and

(iii) *Kosmo* — in print and online on the same date.

(b) *MalaysiaKini*'s YouTube channel 'KiniTV'.

[11] It was also agreed that thousands of Kedah citizens attended the event and had listened to the speech in person, and another 23,801 audience members had watched the speech online through the YouTube channel ORAITNOPO.

THE STATEMENTS' IMPUTATIONS

[12] The plaintiff argues that both statements were published, have been widely disseminated, and repeatedly broadcast by local media. The plaintiff contends that the defendant is responsible for this publication as he had made statements to media practitioners with the full knowledge and expectation that it would be disseminated to the public.

[13] Also, the plaintiff asserts that in both statements, the statements referred directly to him, both in his personal and professional capacity as the Chief Minister (in the MARRIS statement) and the Chairman of Menteri Besar Incorporated ('MBI') (in the REE statement).

The MARRIS statement

[14] The plaintiff contends that the MARRIS statement imputes the following:

(a) that the plaintiff is an incompetent administrator as the Chief Minister of Kedah;

(b) that the plaintiff neglects or disregards proper administration and the needs of the residents in Kedah;

(c) that the plaintiff is involved in serious financial governance issues in his administration of the State;

(d) that the plaintiff neglectes, disregards or otherwise disrespects rules and regulations applicable to government funds allocation;

(e) that the plaintiff directly and knowingly contravened rules and regulations applicable to government funds;

(f) that the plaintiff directly and knowingly contravened provisions of the Federal Constitution;

(g) that the plaintiff is un-Islamic and does not practise Islamic values, despite his association with PAS; and

(h) that the plaintiff is immoral and practices wrong values.

[15] Overall, the plaintiff submits that the MARRIS statement is defamatory and fulfils the test in *Lim Lip Eng v Ong Ka Chuan (as a public officer of a society registered as Malaysian Chinese Association)* [2022] 4 MLJ 454, and its meaning explicitly, implicitly, or by way of innuendo carries the imputations as stated above.

[16] Further, the statement is based on false facts where the Auditor-General report did not mention that there was misgovernance in MARRIS. The changes were merely accounting changes for reconciliation purposes. Not only that, but there was also evidence that the funds were increased and not depleted as alleged.

The REE statement

[17] The plaintiff premises that the REE statement imputes the following:

(a) that the plaintiff is a thief and is involved in the theft of rare earth elements ('REE') in Kedah;

(b) that the plaintiff has betrayed the residents of Kedah by exploiting state resources for personal gain;

(c) that the plaintiff is corrupt, untrustworthy, and lacks integrity;

(d) that the plaintiff is involved in serious financial governance issues in the State's administration;

(e) that the plaintiff uses his influence and position for personal benefit;

(f) that the plaintiff disregards and violates applicable laws regarding resource extraction;

(g) that the plaintiff directly and knowingly involves in the trespassing and theft of REE at Ladang Hutan;

(h) that the plaintiff directly and knowingly involves in the theft of REE;

(i) that the plaintiff is un-Islamic and does not practise Islamic values, despite his association with PAS; and

(j) that the plaintiff is immoral and practices wrong values.

[18] The plaintiff avers that the statements issued by the plaintiff were not only false but also laced with malice. The use of the word 'pencuri' in its ordinary meaning implies someone who steals property with unlawful intent, and innuendo suggests a criminal and untrustworthy person.

[19] Hence, both statements are contended to have fulfilled the three requirements of defamation, and all defences raised are negated by malice.

THE TRIAL, DECISION AND FINDINGS

[20] The plaintiff called five witnesses while the defendant called two witnesses respectively during the trial:

(a) PW1: Hj Muhamad Sobri (former Chief Executive Officer for MBI);

(b) PW2: Muhammad Izzat bin Sukeri (Deputy Director (Enforcement) for Kedah Department of Lands and Mines);

(c) PW3: Dr Muhammad Uzair (Deputy Director (Development) for Kedah Department of Lands and Mines);

(d) PW4: Mohd Zamri bin Shahdan (Chief Accountant for Kedah State Treasury Office);

(e) PW5: Dato' Seri Muhammad Sanusi bin Md Nor (plaintiff);

(f) DW1: Dato' Hj Mohd Fauzi bin Mustaffa (former Director of Kedah Department of Lands and Mines); and

(g) DW2: Datuk Seri Saifuddin Nasution bin Ismail (defendant).

[21] After perusing the facts adduced by the parties through witness statements, the exhibits, and all other evidence, and the submissions by the learned counsels for both parties, this court have decided to allow the plaintiff's claims regarding the REE statement and the MARRIS statement. Herein are my reasons.

[22] It is trite that the elements of defamation as enunciated in *Raub Australian Gold Mining Sdn Bhd (in creditors' voluntary liquidation) v Hue Shieh Lee* [2019] 3 MLJ 720 in the Federal Court are as follows:

(a) the plaintiff must show that the statement bears defamatory imputations.

(b) the statement must refer to or reflect upon the plaintiff's reputation; and

(c) the statement must have been published to a third person by the defendant.

A **[23]** For the sake of this judgment, these elements will be separately dealt with in each instance ie their applicability in the REE statement and the MARRIS statement.

The REE statement

B

Whether the impugned statement refers to the plaintiff

[24] It is relatively undisputed that the REE statement refers to the plaintiff. The only contention from the defendant is that the statement refers to the C plaintiff in his official capacity as the Chief Minister of Kedah and the Chairman of MBI.

[25] Under cross-examination, the defendant agreed that the many phrases ie, 'kamu', 'Sanusi', 'Menteri Besar', 'Pengerusi Perbadanan Menteri Besar', all D refer to the plaintiff directly.

[26] Hence, I find and unequivocally affirm this question — that the REE statement refers to the plaintiff.

E

Whether the impugned statement have been published by the defendant

[27] The defendant did not pursue and has admitted that the REE statement were published and circulated widely, although he attempted a one-liner to F shift liability to third parties as publishers. There were no substantive arguments on this issue. I accordingly deem this as to have been admitted.

Whether the impugned statement is defamatory

G

[28] This court will deal with the imputations collectively. The pillar of the plaintiff's complaint in the impugned statement is:

> ... kita lantik jadi Menteri Besar untuk urus negeri, bukan jadi *pencuri.*

H

[29] The plaintiff's case is that the word 'pencuri' in its natural and ordinary meaning implies someone who takes another's property without permission with intent to illegally possess it. By innuendo, it suggests the plaintiff committed a criminal offense and is untrustworthy.

I

[30] There were no linguistic experts called by either party to assist this court to definitively define the word 'pencuri' in its natural meaning. For this purpose, I turn to the works of the nationally recognised authority on the Malay language: Dewan Bahasa and Pustaka.

[31] In its technical meaning, Dewan Bahasa and Pustaka's online portal *Pusat Rujukan Persuratan Melayu* defines the word 'pencuri' as follows (see: *Pusat Rujukan Persuratan Melayu* accessible at https://prpm.dbp.gov.my /cari1?keyword=pencuri):

> Pencuri — definisi: orang yg mencuri, maling. (*Kamus Dewan* Edisi Keempat)

[32] Flowing from the meaning of 'pencuri' above, the meaning of 'mencuri' is as follows (see: *Pusat Rujukan Persuratan Melayu* accessible at https://prpm.dbp.gov.my/cari1?keyword=mencuri):

> Mencuri — definisi:
>
> 1. mengambil kepunyaan orang tidak dgn kebenarannya .
> 2. mencuri-curi membuat sesuatu dgn tidak diketahui orang atau dgn diam-diam (sembunyi-sembunyi, rahsia) ... (*Kamus Dewan* Edisi Keempat)

[33] The meanings illustrated do not stray far from the imputations submitted by the plaintiff. In *Seema Elizabeth Isoy v Tan Sri David Chiu Tat-Cheong* [2024] 4 MLJ 260 Nordin Hassan FCJ explained the utility of considering the literal meaning of words in an impugned statement at p 273:

> In determining the ordinary and natural meaning of the words, the court may consider their literal meaning or their implied, inferred innuendo, or indirect meaning. In addition, the ordinary and natural meaning of the words also include implications or inferences that can be drawn from the words.

[34] However, the technical meanings only provide the tools to the means. It must be able to satisfy the test for defamation. In *Seema Elizabeth Isoy*, His Lordship Nordin Hassan FCJ at p 272 reiterated the test whether the words in an impugned statement are defamatory is 'those words in their natural and ordinary meaning, tend to lower the plaintiff in the estimation of a reasonable man in society' and 'expose the plaintiff to hatred, contempt, or ridicule':

> [31] The test in determining whether the words are defamatory is also well-settled in that, *those words in their natural and ordinary meaning, tend to lower the plaintiff in the estimation of a reasonable man in society*. The words impute the plaintiff's dishonorable conduct or lack of integrity and *expose the plaintiff to hatred, contempt, or ridicule. It tends to excite against the plaintiff the adverse opinion of others* (see *Syed Husin Ali v Sharikat Penchetakan Utusan Melayu Berhad & Anor* [1973] 2 MLJ 56; *Chok Foo Choo @ Chok Kee Lian v The China Press Bhd* [1999] 1 MLJ 371; [1999] 1 CLJ 461; *Tun Datuk Patinggi Haji Abdul-Rahman Ya'Kub v Bre Sdn Bhd & Ors* [1996] 1 MLJ 393; and *JB Jeyaretnam v Goh Chok Tong* [1985] 1 MLJ 334; [1984] 1 LNS 139).
>
> [32] It is pertinent to reiterate here that *the tendency of the impugned words may also amount to a defamatory nature even if the words did not lower the plaintiff in the*

A *estimation of society* (see *Tun Datuk Patinggi*; *JB Jeyaretnam*; and *Syed Husin Ali*). (Emphasis added.)

B **[35]** With that in mind, I agree with the plaintiff's submission that the word 'pencuri' gives an impact of criminality over the statement. The overall statement started with the image of an ongoing police operation to arrest the perpetrators of the REE theft:

> Isunya banyak, saya pilih nadir bumi ('rare earth'). Baru sahaja polis buat beberapa tangkapan. Tangkapan ini belum habis lagi saudara. Belum habis. Belum habis lagi.

C

[36] This was followed by the reference to the plaintiff and whether he had received a letter from the Department of Lands and Mines being issued to MBI with a compound of RM500,000 for the REE theft. Lastly, the impugned statement came to fore. This sequence of imagery undoubtedly was intended to
D paint a picture of criminality on part of the plaintiff. The word 'pencuri' seals the deal.

[37] The defendant argues that the impugned statement was prefaced with
E the correct context on the issue of governance:

> Saudara, kita masuk dan nak jatuhkan, nak ambil balik ni pasal isu-isu tata kelola

[38] The defendant's argument then followed that, under this preface, the
F statement only refers to misgovernance and does not touch on personal criminality or criminal liability. It was further argued that the term 'pencuri' is a reference to the previous statement on the fine imposed on MBI and does not relate to any personal liability.

G **[39]** An alternative defence is put forward where the defendant alleges that the term 'pencuri' was a simplified term to describe events that led to the fine imposed on MBI for benefit of the masses. It was contended that the terms 'extraction' or 'removal' as it is used in s 426(1) of the National Land Code was too legalistic which could lead to confusion. Ultimately, the term 'pencuri' is
H said to be merely a literary device to illustrate the maladministration of state affairs.

[40] The defendant also went so far to point the blame towards the plaintiff. Allegedly the plaintiff had acquiesced to the term 'pencuri' where apparently
I the plaintiff had agreed to the scenario described in the REE statement could reasonably be attributed to theft.

[41] I must applaud the defendant for coming up with these creative defences. However, it does not detract from the fact that the word 'pencuri' in

itself is a derogatory term. Taken as a whole, I find it difficult to accept that there is no better word to describe the events. There is nothing to suggest within the REE statement that it was solely concerning misgovernance. Prefacing the statement with the context of governance does not automatically means it is what the defendant has argued when one-third of the REE statement — when describing the REE events — are rife with criminal imagery using terms such as 'police' and 'fines' or 'compound', then finally ending with the impugned statement.

[42] To add oil to the fire, the effect of the word 'pencuri' as used by the defendant was devastating. Prior to the defendant's REE statement, the events surrounding the REE situation was never described as 'theft', but this changed practically overnight because of the defendant. It was even admitted by the defendant that he was the first person to describe the events as theft:

> WR: Kan, tak ada perkataan mencuri. Datuk Seri, setuju tak kalau saya katakan bahawa walaupun dokumen tak ada perkataan curi, Datuk Seri lah orang yang pertama mengungkapkan perkataan mencuri bagi kes REE ini pada ceramah Jelajah Madani pada 14/07/2023. You are the first person yang sebut perkataan curi, yang melekat sehingga hari ini bila disebut curi REE, curi REE. Setuju tak?
>
> DSN: Saya setuju, dan kemudian diulangi oleh Plaintif istilah curi juga.
>
> WR: Ya, but you are the first person.
>
> DSN: Yes.
>
> (refer encl 50, p 92, lines 21–32)

[43] Several news media outlets then published the story with words carrying the meaning of and ascribed to theft which were attributed to the plaintiff. It can be observed that headlines on the REE incident transformed from 'illegal mining' to 'Sanusi commits theft' with the date of the defendant's speech as the turning point. For this reason, I am wholly satisfied that the threshold to determine whether the words are defamatory in their natural and ordinary meaning is in the affirmative. The word 'curi' not only imputes and tends to lower the plaintiff's reputation in society but also, in this case, had proven to have done the damage in the form of widespread use of the said term.

[44] Hence, it is my finding that the REE statement is defamatory in its ordinary and natural meaning. Therefore, the plaintiff have fulfilled all the elements for defamation for the REE statement.

The defence of justification regarding the REE statement

[45] For completeness of discussion, I will now consider the defences raised by the defendant separately. For the sake of reference, the defendant had pleaded the defences of justification and fair comment. This sub-section will deal with justification.

[46] To start off the discussion, it is apt to remind that the defence of justification is governed by s 8 of the Defamation Act 1957:

> In an action for libel or slander in respect of words containing two or more distinct charges against the plaintiff, a defence of justification shall not fail by reason only that the truth of every charge is not proved if the words not proved to be true do not materially injure the plaintiff's reputation having regard to the truth of the remaining charges.

[47] Although the elements for a defence of justification are not outlined in the very section, it is trite that truth is only relevant for the defence of justification (see *Datuk Husam bin Musa v The New Straits Times Press (M) Bhd & Ors* [2014] 8 MLJ 370). The same can be said for a defence of fair comment where the facts on which the comment or inferences were made must be truly stated (see *Dato' Sri Dr Mohamad Salleh bin Ismail & Anor v Mohd Rafizi bin Ramli* [2022] 3 MLJ 758).

[48] This is unfortunately not the case for the REE statement. The plaintiff has credibly shown that the defendant knowingly uttered falsehood when he issued the statement. There are two factual statements which were false: the first being the status and abuse of the 4 October letter issued by the Kedah Department of Lands and Mines; and second, the role of the plaintiff as Chairman of MBI.

[49] The first factual statement proven to be untrue is the existence of the compound/fine letter issued by the Kedah Department of Land and Mines dated 4 October 2022. This letter is the factual basis of the REE statement as it relies wholly on its contents. According to the signatory of the letter, DW1, not only that the letter was never issued to the intended recipient ie, MBI, but it was also retracted and destroyed:

> NS: I'll ask the witness, My Lord. Dato', Dato' tahu di mana salinan asal surat ini?
>
> DMF: Yang Arif, surat ini sebenarnya ada disediakan pada tarikh yang disebut tadi tetapi ianya tidak diserahkan kepada pihak yang dikompaun dan surat ini telah pun dibatalkan. Jadi, tidak ada lagi salinan sebab kita batalkan dan kita keluarkan surat yang baru.
>
> (refer encl 50, p 107, lines 1–21)

[50] There was also a later version of the compound that was issued the next day, not only to MBI, but to also a perpetrator by the name of Ho Chung Meng. DW1 had testified that the only difference between the 4 October and 5 October letter was the addition of Ho Chung Meng's name as a recipient without any other changes to its content. DW1 had also explained that the only reason MBI's name was in the compound letter was because MBI owned the permit and was not involved whatsoever to the act alluded in the REE statement:

> YBY: Setuju. Dan Dato' boleh sahkan MBI dinamakan di dalam notis kompaun hanyasanya kerana peranan MBI yang merupakan pemilik kepada permit semata-mata dan bukannya pihak yang terlibat dengan pengalihan bahan batuan tersebut, setuju atau tidak?
>
> DMF: Setuju.
>
> (refer encl 50, p 118, lines 34–37, p 119, lines 1–2)

[51] The defendant acknowledged that the 4 October letter was never issued to the MBI but relied on it as part of the factual basis for the statements made, believing it to be an official and legitimate document at the time. It is the defendant's submission that the letter was signed by the relevant authority and was the official document available to the defendant from the police briefing:

> WR: Dan di muka surat belakang 7A adalah, dia panggil transcribe kepada surat yang gelap tadi. Ok? Datuk Seri, saya terlebih dahulu nak tanya, dokumen ini datang daripada peguam cara Datuk Seri yang saya percaya datang daripada Datuk Seri. Boleh bagi tahu Mahkamah, dari mana Datuk Seri dapat dokumen ini?
>
> DSN: Melalui taklimat oleh pihak berkuasa kepada saya.
>
> WR: Pihak berkuasa itu jabatan apa?
>
> DSN: Polis Diraja Malaysia.
>
> WR: Dan taklimat itu berkaitan dengan apa, Datuk Seri?
>
> DSN: Berkaitan dengan aktiviti yang berlaku di dalam hutan simpan yang mempunyai elemen-elemen jenayah yang lain, seperti *trafficking person*, *smuggling of migrant or forced labour*, pelanggaran terhadap Akta Imigresen dan pelanggaran di bawah ATIPSOM dan SOSMA.
>
> (refer encl 50, p 260, lines 22–37, p 261, lines 1–2)

[52] I am with the plaintiff that if the police have information of the 4 October letter — which was undisputedly never issued and was destroyed almost instantly after printing, then surely, they would have also known the existence of the 5 October letter. It appears to me that this is a case of injurious half-truths at best to best suit the narrative at hand.

[53] Further, the defendant also knew that the post of Chief Executive Officer ('CEO') has day-to-day involvement in running the enterprise whereas the Chairman post is only an advisory role. Yet, the defendant remains insistent that the post carries a certain level of responsibility and accountability for major issues such as the REE situation but in the same breath, failed to indict the CEO of MBI into the picture who is the *actual* recipient of the compound. I find that this, again, shows a lack of preparation to verify the accuracy of a statement.

[54] Collectively, this can be considered reckless behaviour by the defendant. In my view, the defendant did not care for the truth of the matter but instead has taken whatever ammo available to take a shot against a political opponent for any brownie points. The decision in *Syed Nadri Syed Harun & Anor v Lim Guan Eng and other appeals* [2019] 4 MLJ 259 at pp 272 and 273 provides an apt description on the manner to treat the defendant's conduct — as if he knew the information was false:

> The learned trial judge however, in our view had correctly found malice premised on Her Ladyship's own inference like how it was done in *Tun Patinggi Abdul Rahman Ya'kub*. And that is a publisher of an untrue defamatory matter who recklessly, without considering or caring its truthfulness or otherwise should be treated as if he knew it to be false.

[55] The decision in *Syed Nadri Syed Harun* describes the learned High Court judge premised her finding on malice in the same manner as in *Tun Datuk Patinggi Haji Abdul-Rahman Ya'Kub v Bre Sdn Bhd & Ors* [1996] 1 MLJ 393. I find the decision by Richard Malanjum J (later, CJ) on malice at p 413 most descriptive:

> It is a settled law that malice can be established by way of intrinsic and extrinsic evidence.
>
> Express malice was given a broad meaning by our then Supreme Court as malice in the popular sense or desire to injure the person who is defamed (see *S Pakianathan v Jenni Ibrahim* [1988] 2 MLJ 173).
>
> Instances of malice have been accepted by our courts as ill-will or spite or some previous quarrels or bad relationships or any indirect or improper motive in the mind of a defendant at the time of publication and actuating it. Malice can defeat both defences of qualified privilege and fair comment (see *Rajagopal*'s case). Malice can also be inferred where a defendant made a defamatory statement knowing it to be false, or he did not believe what he published was true, or that he made it recklessly, not caring whether it was true or false; or where he deliberately stopped short in his inquiries in order not to ascertain the truth. Generally, honest belief to the truth of the statement is sufficient to negate malice. But, if it can be shown that the dominant motive of a defendant in making the statement was to vent personal spite or the desire to injure or to obtain private advantage or some other purposes rather than in the exercise of the relevant duty, then honest belief itself is not

> sufficient to rebut express malice. Further, where a defendant's desire to comply with the relevant duty or to protect relevant interest is not the significant part for his reason in publishing the defamatory statement, express malice can be inferred. But in the first place it is for the plaintiff to prove affirmatively that the defendant did not believe what he published was true or was indifferent to the truth or falsity of the statement. Yet, malice may also be inferred where the defendant's publication incorporated defamatory matter which was not really necessary to satisfy the duty or protection of interest giving rise to the privileged occasion (see *Horrocks v Lowe* [1975] AC 135 and *Maidstone Pte Ltd v Takenaka Corp* [1992] SCD 26; [1992] 1 SLR 772). Malice may also be inferred either from the terms of the communication itself as, for example, where the language is unnecessarily too strong for the occasion and circumstances ...

[56] Drawing from the above excerpt, I am minded that the defendant knew that the statement was false, or at least, indifferent to the truth. It cannot be said that the defendant honestly believed the statement he uttered was the truth when it is evident that he chose an incomplete version of a fact ie, choosing the officially destroyed and recalled 4 October letter over the officially issued 5 October letter.

[57] To top it all, this was done for a political campaign. I find the situation similar to *Datuk Harris bin Mohamed Salleh v Abdul Jalil bin Ahmad & Anor* [1984] 1 MLJ 97 where the defendant published a book detailing several seemingly corrupt actions just before the 1982 General Election and the timing of the publication was observed by Siti Norma Yaakob J (later CJM) can only mean that the publication was intended to influence the people of Sabah. She described that the timing was intended to inflict the most harm on the plaintiff's reputation and thus evidently motivated by malice:

> The defendant's motive in publishing the libel just before the general elections could only be motivated by malice, and the libels were perpetrated for political and financial gains. The defendants had taken advantage of the situation by depicting the plaintiff in the worse possible light. They acted deliberately and recklessly not caring for the true nor the distress it caused and the harm that would be inflicted on the personal and political reputation of the plaintiff.

[58] The timing of the statement during a political campaign taking in mind of its intended audience — prospective voters, and the evident half-truths relied by the defendant, draws inference that the REE statement was uttered for nothing more than to push forward a political agenda. It is also quite concerning that the home minister is using what should be privileged information, communicated in confidence by enforcement authorities in an official capacity, for his political agenda. There was never any evidence shown by the defendant that this information was intended for public consumption. If not for this suit, the public would not have the means to verify the

information conveyed by the defendant. For the above reasons, I find that there is overwhelming evidence that the REE statement was tainted by malice effectively nullifying any defence.

[59] It is essential to reiterate here that the law presumes that the defamatory words are false (see *Tun Datuk Patinggi Ali*) and it is trite that to succeed in a defence of justification, the defendant must prove on the balance of probabilities that the imputations are substantially true, and questions of bad faith or malice does not arise (see *Syarikat Bekalan Air Selangor Sdn Bhd v Tony Pua Kiam Wee* [2015] 6 MLJ 187), where in order to justify such comments, the correct imputations or conclusions to be drawn from the proven facts must be shown.

[60] In dealing with imputations on governance, the defendant set out several events which was alleged to have factually proven the imputations, namely — raids on the REE mining site in Hutan Simpang Bukit Enggang, the involvement of a sub-contractor who contravened mining legislation, several arrests of trafficked migrants, the CEO of MBI's remand by the police, and an official confirmation from the Kedah state government for the arrested migrants' work visa. This was averred to be instances of weak enforcement and simply, misgovernance.

[61] I am unable to arrive to the same conclusion as the defendant on this point. None of the facts presented illustrate that the plaintiff acted in a manner that paints misgovernance. The incidents all relate to MBI and MBI's officers. The obvious notion of separate corporate legal entity must come into place here. Not only that, but it was also already conceded that the plaintiff did not play any role on daily decision making. He is only on the board in an advisory role. Therefore, to infer that MBI's indictment is a result of the plaintiff's misgovernance is too far stretched.

[62] In response to imputations related to the letters dated 4 October and 5 October, the defendant relies on the fact that the information was brought to him through a PDRM briefing in his capacity as the home minister. Thus, he asserts that the information was based on sound and reasonable bona fide belief as to its authenticity. Moreover, the letter itself had the seal of the Department of Lands and Mines and did not trigger any suspicions to its contents. The defendant then attempts to justify against the imputations that the plaintiff was the recipient of said letters, which he avers that regardless of the version of the letter, the constant variable is MBI was an intended recipient of the fine, and the recipient is purportedly under the plaintiff's stewardship.

[63] The defendant thereafter relied on the case of *Tuanku Nurzahirah v Clare Louise Brown (also known as Clare Rewcastle Brown) & Ors* [2023]

11 MLJ 234 (HC) to advance their defence of justification under s 8 of the Defamation Act 1957 and invoke its proviso.

[64] The *Clare Rewcastle Brown* case was a defamation action where I dismissed the plaintiff's claims at the High Court. In the defendant's interpretation, the case was dismissed on the grounds that only the identity of the person intended to be named in the publication was incorrect because the author of the impugned statement followed news reports and was merely connecting the dots. Thus, the mistaken identity did not materially injure the reputation of the plaintiff (s 8).

[65] It is also the defendant's contention the fact that MBI was indeed fined anyway is analogous to the circumstances of the *Clare Rewcastle Brown* case and thus he is able to rely on s 8 to put up a defence of justification. I am not with the defendant on this interpretation. To begin with, the high court decision in *Clare Rewcastle Brown* was overruled. Besides, in *Clare Rewcastle Brown*, the defendant was able to prove the truth in all but the identity of the intended person, but above all, it was my finding in that case that the impugned statement was not defamatory. Therefore, even if the intended identity was correctly stated, it remains not defamatory.

[66] The inverse occurred in this case before me. The plaintiff was the intended target in the REE statement, and the defendant failed to prove all but the fact there was a compound issued to MBI to be true — even that, it is a half-truth which materially injures the plaintiff (see *Seema Elizabeth Isoy* on the circumstance where half-truths can be defamatory). Moreover, by virtue of the doctrine of separate legal and corporate entity, I see no reason why a proposed wrong of a company, if at all, could be related back to the chairman (in his advisory role) and causing him to be labelled as a thief. Hence, it is my finding the proviso of s 8 does not apply. The defence of justification cannot shield the defendant here.

[67] Lastly, on the imputations related to describing the plaintiff as a thief, the defendant contended the words 'curi' and 'pencuri' are merely literary devices to describe misgovernance. The same facts as in para 60 of these grounds on imputations of misgovernance were put forth as justification. My reasoning in rejecting this argument remains the same as in para 61 above.

[68] In conclusion, the defendant had failed to prove on the balance of probabilities any substantive facts that is able to justify the REE statement. Thus, their defence on justification falls.

A Whether there was a valid defence of fair comment

[69] It is trite that in order to establish a defence of fair comment, three elements need to be proven (see *Dato Sri Dr Mohamad Salleh*):

B (a) that the words complained of are comments, though they may consist of or include inference of facts;

(b) that the comments are on a matter of public interest; and

(c) that the comments are based on facts, truly stated. The comment is one C which a fair-minded person can honestly make on the facts proved.

[70] In the defendant's submissions, he went straight towards the element of public interest. In his cross-examination as well, when he was confronted by the plaintiff's counsel on all sides on this point, he remained steadfast that that the D matter is of great public interest where good governance is at stake.

[71] The defendant asserts that many elements of the REE statement were related to public interest namely:

E (a) the statement was made during an election campaign;

(b) the statement was made over governance of the REE extraction mining project which forms part of the plaintiff's party manifesto. Therefore, misgovernance on the REE project has direct implications to public F welfare.

(c) the plaintiff himself had testified in his witness statement that he mentioned the REE project in his speech at the Kedah State Assembly:

> G Q6: Boleh Dato' Seri jelaskan apakah yang berlaku terhadap dakwaan kecurian REE di Bukit Enggang, Sik, Kedah?
>
> A6: Saya ingin jelaskan sepertimana Penjelasan saya di Dewan Undangan Negeri Kedah.
>
> Q7: Boleh Dato' Seri rujuk Ikatan Dokumen Bersama muka surat 331, dan H jelaskan dokumen ini?
>
> A7: Ini dokumen Laporan Akhbar berkenaan dengan penjelasan saya di DUN Kedah berkenaan isu ini.
>
> (refer encl 27, p 3–4)

I

[72] The plaintiff contends that element of public interest is not established where the referred facts were not true (for the same reasons mentioned before) and that the comment is not one that a fair-minded man can adduce on the proven fact.

[73] I have read the referred document. It is a news clipping describing the Kedah government recovered financial losses from illegal REE mining in the Bukit Enggang forest reserve by issuing compounds totalling RM630,000 to an unnamed Chinese national responsible for the activity, rather than pursuing court action which would have diverted fines to the federal government. Authorities also seized REE materials worth over RM391,000, confirmed their composition through lab tests, and halted further illegal operations by destroying mining equipment. The plaintiff clarified that MBI was not involved in the mining, as official exploration had not commenced due to pending SOPs from the Ministry of Natural Resources.

[74] In *Lee Kuan Yew v Derek Gwyn Davies & Ors* [1990] 1 MLJ 390, Thean J quoted the decision of Lord Denning MR to describe what is considered public interest at p 403:

> I need not go further than the case of *London Artists Ltd v Littler* [1968] 1 WLR 607, where the Court of Appeal held that what was happening to a performance at a theatre was a matter of public interest. Lord Denning MR said, at p 391:
>
> Three points arise on the defence of fair comment. First, was the comment made on a matter of public interest? The judge ruled that it was not, I cannot agree with him. There is no definition in the books as to what is a matter of public interest. All we are given is a list of examples, coupled with the statement that it is for the judge and not for the jury. I would not myself confine it within narrow limits. *Whenever a matter is such as to affect people at large, so that they may be legitimately interested in, or concerned at, what is going on; or what may happen to them or to others; then it is a matter of public interest on which everyone is entitled to make fair comment.* (Emphasis added.)

[75] Learned authors of *Halsbury's Laws of Malaysia* — Defamation, Vol 13(1) at (370.142) analysed the courts' treatment of the definition for public interest as follow:

> There is no definition in the books as to what is a matter of public interest, which is an issue for the judge to decide. *Whenever a matter is such as to affect people at large, so that they may be legitimately interested in, or concerned at, what is going on; or what may happen to them or others; then it is a matter of public interest on which everyone is entitled to make fair comment.* (Emphasis added.)

[76] At the outset, considering the gravity and scale of the REE incident, and that it was discussed in the Kedah Legislative Assembly, I am agreeable with the defendant that it is a matter of public interest. However, I cannot agree with defendant's argument on the rest of the elements. I will start with whether it is a comment, and whether a fair-minded person would have made on the facts proved.

[77] The REE statement begins with the defendant announcing to the audience that he would explain on the REE incident, one of several issues on alleged by the defendant as misgovernance. He then metaphorically (or probably literally) called out to the plaintiff to ask whether he received a letter dated 4 October 2022 from DW1, the former Director for the Kedah Department of Lands and Mines, for a compound under s 426(1) of the National Land Code. However, there was a clear delineation in the defendant's tempo when he made the stinging statement accusing him to be a thief (in an as-a-matter-of-fact manner) and that there would be a series of exposes. This, in my view, is a statement of fact and not the defendant's opinion and inference from a proven fact. There was no elucidation or inference to form an opinion. I would even say it is much closer to an accusation rather than an opinion.

[78] This contrasts with the manner the impugned statement was conveyed in *Dato' Sri Dr Mohamad Salleh*. First, the impugned statement over there referred to facts which were proven true — contrary to the case before me. Second, although the statement in the case intended to achieve the same effect as the case before me, the respondent was careful to formulate an opinion by drawing inferences from the facts before forming a narrative. The defendant in our present case did not do this. Instead, he made accusatory remarks on the character of the plaintiff without so much as alluding a trail of logic to his remark. Therefore, I am unable to agree with the defendant that the REE statement is a comment — it was made as a statement of fact.

[79] On to the last element, whether a fair-minded person would have made on the facts proved, I refer to the excerpt referred by the plaintiff as mentioned in para 73. My observation is that not only it does not support the defendant's argument, but it also prejudicial to it. It can be read in the excerpt the plaintiff defended MBI's former CEO, Sobri Osman, from an allegation that MBI paid the compound during the assembly's question and answer session:

> Meanwhile, he also denied any involvement by the Kedah Menteri Besar Corporation (MBI) in any REE exploration and mining activities in the Bukit Enggang Forest Reserve ... 'The one who stole (REE) is a Chinese national and the one who paid the compound is not Sobri Osman, who heads MBI,' he said when replying to a supplementary question by Datuk Dr Ismail Salleh (AMANAH-Pengkalan Kundor).

[80] This quote shows that at the time of the REE incident, public opinion on the same facts as the defendant narrated in the REE statement ie, that MBI was compounded for illegal mining, was that MBI's former CEO was the perpetrator, or at least an abettor. This public sentiment was so evidently strong, it warranted a question in the state assembly. There was not a point that the public opined and related the incident to the plaintiff despite his position

as the Chairman of MBI until the REE statement was published. Thus, I need not look further to establish this element.

[81] For the above reasons, the defendant has failed to establish two out of three elements of fair comment. Accordingly, the defendant failed in his defence on fair comment.

Whether the statement warrants qualified privilege

[82] It is trite that malice nullifies defence of qualified privilege. However, to complete the final discussion on the REE statement, I will address this issue briefly.

[83] There is a particular distinction for raising a defence on qualified privilege compared to the two earlier. I can explain no better than the decision of Aziah Ali FCJ in *Dato' Dr Low Bin Tick v Datuk Chong Tho Chin and other appeals* [2017] 5 MLJ 413 at para 46:

> *Qualified privilege depends on the occasion upon which the communication is made, and not the communication itself. A qualified privilege occasion is an occasion where the person who makes a communication has an interest or a duty, legal, social or moral to make it to the person to whom it is made, and the person to whom it is so made has a corresponding interest or duty to receive it*. If the communication were made in pursuance of a duty or on a matter in which there was a common interest in the party making and the party receiving it, the occasion is said to be one of qualified privilege. *Whether an occasion is a privileged occasion depends on the circumstances of each case, the nature of the information and the relation of speaker and recipient. It is for the judge alone to determine as a matter of law whether the occasion is privileged.* (Emphasis added.)

[84] The defendant did not submit substantially on this point. It was only submitted that the issue of REE is that of public interest and that it was his duty as Home Minister to inform the public who are also voters on the plaintiff's misgovernance.

[85] It is undisputed the REE statement was made during an election campaign to an audience consisting of voters. The location of the campaign was at the plaintiff's constituency where the plaintiff was the incumbent. I find that the averment of the defendant that he was duty-bound to inform voters, during an election campaign no less, as a self-serving narrative and incongruent with the factual matrix. There was no common interest in the party making and the party receiving the information. In fact, it was not even a revelation to the audience, so to speak, that MBI was implicated in the REE incident. There was no benefit to the defendant's statement: the police had already charged the perpetrator; the compounds were already issued by the Department of Lands

and Mines; the Kedah Legislative Assembly had already discussed the issue and formalised measures for future mitigation and prevention efforts. It is very much clear that there was no other reason for the defendant to do so than to tarnish the plaintiff's reputation and gain political leverage.

[86] Therefore, I find that the defendant had failed to prove the defence of qualified privilege is applicable. It is now established that the defendant had failed to raise any defence against the tort of defamation. I, accordingly, for the REE statement, find the defendant liable for defamation against the plaintiff.

The MARRIS statement

Whether the impugned statement have been published by the defendant

[87] It was effectively undisputed that the MARRIS statement was published by the defendant. Their only defence was that the defendant did not publicise by his own effort. It was published by third parties through their own platforms, without any influence exercised by the defendant. To this, the plaintiff presents a legally sound argument based on the established tort law principle of liability for republication. The plaintiff argues that the law regarding publication is established and settled (*mantap*), meaning that direct publication by the defendant is not required if certain conditions regarding subsequent publication are met.

[88] Primarily, the plaintiff relies on the principle of expected publication. The plaintiff cites the High Court decision in *DP Vijandran v Karpal Singh & Ors* [2000] 3 MLJ 22. This case establishes that when an individual gives a press statement for publication, or in the expectation that it would be published, he becomes responsible for the republished version, even if the version is edited.

[89] Also, the plaintiff relied on natural and probable consequence to rebuke the defendant. The plaintiff relies on *Carter-Ruck on Libel and Slander*, which holds the original publisher liable if republication was the natural and probable consequence of the original publication. It is the plaintiff's case, to which this court agrees, that giving an interview or statement to press reporters with the intention that the defamatory substance be published makes the individual liable for libel, as he authorised the publication which subsequently was made in the newspaper itself.

[90] Thus, the plaintiff concludes that merely publishing the defamatory MARRIS statement to a third party, specifically media officials (*pegawai-pegawai media*), is sufficient to prove the element of publication based on these established laws. I am with the plaintiff here. I am with the

plaintiff that this is an untenable defence seeing that it is plainly obvious to the defendant, a seasoned politician, to know that speaking to media practitioners would have no other effect than to have his words publicised.

Whether the impugned statement refers to the plaintiff

[91] It is not disputed that the MARRIS statement refers to the plaintiff per se, but it is in dispute as to in which capacity, personal or official. The defendant averred that the statement refers to the plaintiff in his capacity as the Chief Minister of Kedah.

[92] The defendant inferred several statements in supporting his submission that he referred to plaintiff in his official capacity:

> 'Tapi apa yang *Menteri Besar Sanusi* buat ...'
>
> '... *dia* menerima dana MARRIS peruntukan tetap mengikut Perlembagaan oleh Kerajaan Persekutuan yang berjumlah [RM]1.6 bilion.'
>
> '... *dia* telah meminta dengan Menteri Kewangan supaya kerajaan Kedah dibenarkan untuk memindahkan duit MARRIS kepada akaun Pembangunan.'

[93] It was submitted that the word 'dia' in the second and third statements quoted above refers to the Government of Kedah in its literal meaning but implies the plaintiff's capacity as the Chief Minister. The first statement plainly referred to the plaintiff in said capacity. It was further submitted the plaintiff himself mentioned the statement referred to Government of Kedah and his professional capacity as the Chief Minister through a Facebook post on 15 July 2023 issued in response to the MARRIS statement.

[94] The plaintiff's responded that law of defamation does not distinguish references to a plaintiff's personal or professional capacity. The decision of Harmindar Singh Dhaliwal FCJ in *Lim Guan Eng v Ruslan bin Kassim and another appeal* [2021] 2 MLJ 514 at p 547 could not be clearer. The excerpt quoted was particularly lengthy. I will truncate to its most relevant paragraphs for ease of reading:

> [91] With respect, I do not think this was a correct assessment of the facts. The pleadings indicated that the action was brought by the plaintiff personally and not in his official capacity as Chief Minister. It was the plaintiff suing as a private citizen and not by the office of the Chief Minister or the Government of the State of Penang. In other words, the suit was brought as an individual and not by an organisation in the form of the government or a government body. The impugned statements had named the plaintiff and specifically referred to his disloyalty to the country both as Chief Minister and as a citizen.
>
> [92] *The sting of the statements was more a criticism of the plaintiff rather than his office or the Penang State Government*. He was the one who had the capacity to divulge the

A secrets. *I do not think, therefore, that the plaintiff was disentitled from bringing the action as an individual to protect his reputation* (see *Knupffer v London Express Newspaper, Limited* [1944] AC 116; *Goldsmith and another v Bhoyrul and others* [1998] QB 459; *Lee Hsien Loong v Singapore Democratic Party and others and another suit* [2006] SCD 263; [2007] 1 SLR 675; [2006] SGHC 220 ('Lee Hsien Loong
B v SOP')). (Emphasis added.)

[95] In *Ruslan bin Kassim* above, the defendant went further to deny that the impugned statement referred to the plaintiff and instead referred to the 'entire Government and the system of non-transparent and non-accountable
C governance'. Thus, as governments cannot be defamed and hence sue for defamation (referring to *Derbyshire CC v Times Newspaper Ltd & Ors* [1993] 1 All ER 1011), the suit cannot stand. Harmindar Singh FCJ was not convinced by this argument as the impugned statement named the plaintiff and referred to him specifically as Chief Minister and as a citizen.
D

[96] I find that the decision in *Ruslan bin Kassim* above provides relevant guidance to the present case. Similar to *Ruslan bin Kassim*, the sting of the MARRIS statement was criticising the plaintiff rather than the Kedah State
E Government as evident in this part of the statement:

> Tapi apa yang *Menteri Besar Sanusi buat? Ya, dia gunakan duit MARRIS itu untuk tujuan pembangunan yang menyalahi semua tata kelola kewangan kerajaan.* (Emphasis added.)

F **[97]** Hence, I am of the same view that the plaintiff is not disentitled in any way to bring an action to protect his reputation whether in his personal or professional capacity; it does not make a difference. Thus, it is clear here that it remains undisputed that the MARRIS statement refers to the plaintiff.

G Whether the impugned statement is defamatory

[98] I will deal with the pleaded imputations in three collective groups:

(a) imputations para 14(i), 14(ii) and 14(iii) collectively known as
H imputations related to misgovernance;

(b) imputations in para 14(iv), 14(v) and 14(vi) collectively known as imputations related to legal non-compliance; and

(c) imputations in para 14(vii) and 14(iii) collectively known as imputations
I related to immoral values.

[99] On imputation (i) specifically, the defendant averred that the MARRIS statement was not directed to the plaintiff in his personal capacity but as a critique of his decision-making and conduct as Chief Minister. Thus, the

criticism in the MARRIS statement is limited to political commentary on issues relating to governance, to be interpreted in the following manner:

(a) the defendant questioned the Government of Kedah, led by the plaintiff, on the governance of MARRIS funds which constitutionally is for the purposes of road maintenance. However, the Kedah government attempted to utilise it for development which is cause for concern. This is although the plaintiff had formally requested approval from the MOF to do so;

(b) the defendant had referred to the Auditor-General's report where there was an express concern on financial governance under the plaintiff's management and that the Kedah government had requested approval from the Federal government to reconcile its financial practice. This, the defendant, interprets it as commentary on institutional practice of misgovernance and not a personal attack. The defendant also characterised this concern as 'creative accounting' which is improper in public fund governance;

(c) the defendant believed the Kedah government's weak revenue collection is reflective of the plaintiff's excessive focus on politics sacrificed core governance responsibilities. His only statement was that low-income states are those with ministers occupied with political rhetoric as opposed to effective governance. This is described as a commentary on the plaintiff's style of politicking and public governance, and not a personal attack on his competency and integrity; and

(d) the defendant had expressly provided a disclaimer, 'saya tidak akan menyerang peribadi dia' which is meant to indicate the comments are directed only to issues of public governance and not a personal critique.

[100] On imputations relating to misgovernance, the defendant chiefly contends that:

(a) the MARRIS statement did not impute any form and is far too remote to arrive to the make form of inference of neglect to public needs. It is merely a critique on issues concerning public welfare specifically the manner of addressing the worries and concerns of the people of Kedah; and

(b) the MARRIS statement contextually do not amount to imputations of serious financial governance, only weak financial administration as even the State Advisor for Kedah had advised the Government of Kedah that such a reconciliation exercise was not consistent with law. For clarity, the Defendant claims the criticism is only on administration of finance and fiscal governance, not serious financial governance or offence.

[101] It is the plaintiff's submissions that although the defendant attempted to provide a different interpretation of the MARRIS statement in its ordinary and natural meaning, the alternate does not stray far from imputations related to misgovernance. Not only that, but the published statement is also contrary to truthful facts.

[102] It is a trite principle that a plaintiff in a defamation suit is aggrieved because the falsity of the allegation has caused adverse implications on his reputation (see *Dato' Sri Dr Mohamad Salleh bin Ismail & Anor v Nurul Izzah bt Anwar & Anor* [2018] 3 MLJ 726), but the question of fact to be determined by this court is whether the words in the MARRIS statement fulfils the test for defamation.

[103] In my interpretation of the MARRIS statement, the following part is of crucial:

> Tapi apa yang Menteri Besar Sanusi buat? Ya. *Dia gunakan duit MARRIS itu untuk tujuan pembangunan, yang menyalahi semua tata kelola kewangan Kerajaan* ... (Emphasis added.)

[104] This sentence sets the tone of the rest of the speech. The defendant has framed the rest of his statement as the plaintiff's actions and departed from his imagery that it is the Kedah government's actions. This is prevalent in the rest of the transcript, where at every following paragraph, the defendant fired shots to describe the plaintiff in a disparaging manner.

[105] It does not help the defendant's case that their only alternative interpretation of the MARRIS statement is that it does not imply wrongdoing and is merely a political commentary on financial governance. It seems the defendant had all but outright admitted that it imputes that the plaintiff is embroiled in financial misgovernance.

[106] The phrase 'menyalahi semua tata kelola kewangan Kerajaan' clearly imputes the plaintiff had committed serious financial misgovernance, where the defendant drove the point home by citing the Auditor-General in his statement and ending with the sentences 'tidak boleh dilakukan. Itu isu governance'.

[107] Does the existence of a disclaimer fundamentally evolve a word that tends to lower the plaintiff in the estimation of a reasonable man in society to one it is not? In the right context, it would be possible — but that is not the case in this situation. I am fortified with the decision of S Nantha Balan JCA in *Tan Sri David Chiu Tat-Cheong v Seema Elizabeth Soy* [2023] 3 MLJ 674; [2023] 6 CLJ 51 at para 66 where His Lordship opined that no disclaimer would be a

defendant's free pass if defamation is established:

> [65] Counsel said that this is nothing more than posting a half-truth and asking the readers to look out for themselves, the other half on Google. We agree. *The disclaimer does not give the defendant a free pass such that it exonerates her from liability for having defamed the plaintiff.* It was argued before us that the defendant cannot be held liable for what she did not write about the plaintiff. (Emphasis added.)

[108] Therefore, I am with the plaintiff that the MARRIS statement does impute misgovernance as pleaded in paras 14(i) and (iii) where it fulfils the threshold of defamatory meaning by lowering the plaintiffs reputation in the estimation of a reasonable man in society. However, on para 14(ii), I agree with the defendant that it is too remote to arrive at the imputation that the plaintiff had neglected the needs of the people of Kedah through maladministration.

[109] The definition of 'maladministration' (pleaded: *tidak mengambil endah dan/atau peduli tentang pentadbiran)* is similar but sufficiently distinct to distinguish with 'misgovernance' (pleaded: *permasalahan tatakelola).* Dewan Bahasa dan Pustaka defines the words 'tatakelola' and 'pentadbiran' as follows:

> tatakelola — definisi: lihat tadbir urus
>
> tadbir urus — definisi: cara atau sistem mentadbir, mengurus, mengawal selia dsb dasar, fungsi atau perjalanan sesebuah perbadanan, syarikat dsb. (Kamus Pelajar Edisi Kedua)
>
> pentadbiran — definisi: perbuatan mentadbirkan, pengelolaan, pengurusan, pemerintahan: dgn adanya pegawai itu, ~ negara tetap berjalan dgn tidak putus-putus; (Kamus Dewan Edisi Keempat)

[110] It is clear that the word 'pentadbiran' and 'tatakelola' are distinguishable. The former is an act of governance, while the latter is a system of governance. Thus, to impute that the plaintiff neglected the needs of people of Kedah implies the plaintiff's neglect was an active action. This is an inference too remote to arrive at.

[111] On imputations relating to legal non-compliance, I partially agree with the defendant. Although the defendant had referred to the Federal Constitution in his speech, it only refers to the MARRIS funds being allocated in accordance with the provisions of the Federal Constitution. I am unable to agree that the defendant had imputed that the plaintiff knowingly contravened the Federal Constitution as pleaded in para 14(vi).

[112] The same cannot be said for imputations in para 14(iv) and (v) on contravening rules and regulations on government funds and its allocation. On this point, the defendant had carefully worded that the plaintiff requested for approval to the Ministry of Finance to 'transfer' the MARRIS funds but earlier

A mentioned that the plaintiff 'utilised' it. This causes confusion to the reader but was more aligned with contravening rules and not a simple case of an approval being denied. This is further cemented by the defendant's use of the phrase 'creative accounting', which is a term to describe manipulation of financial statements to present a more favourable illustration of a company's finances. B The defendant already averred that the term was used to describe the act of seeking approval from MOF to transfer the MARRIS funds to the state's development account which he alleged as improper practice.

C **[113]** Nevertheless, for the purposes of this element, it is established that the MARRIS statement imputed that the plaintiff's actions are non-compliant with the law, specifically rules and regulations on government funds and its allocation and is improper.

D **[114]** Lastly, on the imputations related to immoral values, I agree with the defendant that there is nothing in the MARRIS statement referring to Islam, its values, or the plaintiff's beliefs. The following is an excerpt:

> Dia pemimpin parti Islam, dia patut tahu tata kelola yang betul.

E **[115]** The operative word here is pemimpin. The meaning does not change if it were to refer to, for instance, a socialist party or a liberal party. It only refers to his position in his political organisation and relates it governance which has already been established as have been casted in a defamatory manner. The same F can be said on the pleaded imputations on immoral values in general. I agree with the defendant that there was nothing to suggest that the plaintiff himself practices immoral values whether the statement is read in silo or as a whole. Notably, the plaintiff did not submit any points on this specific imputation and canvassed it under the umbrella of falsehood. Thus, I am satisfied that there is G nothing in the MARRIS statement to impute that the plaintiff practices immoral values as pleaded.

[116] In conclusion, I find imputations in para 14(i), 14(iii), 14(iv) and 14(v) as pleaded by the plaintiff on misgovernance and legal non-compliance are H valid and there is defamatory meaning attached to the MARRIS statement. Accordingly, the plaintiff has proven prima facie defamation.

Whether there was a valid defence of justification or fair comment

I **[117]** As established in the REE statement discussion, it is a common element that in justification and fair comment that factual truth needs to be established for the defence needs to succeed.

[118] The defendant's alleged justification can be summarised as follows:

(a) the Auditor-General's report on the State Government and State Agencies Financial Statement for Financial Year Ending 31 December 2021 ('the 2021 audit report') had expressly stated concerns on the management of MARRIS funds. Thus, the defendant's reliance and citing the Auditor-General's reports is valid;

(b) according to relevant legislation, only approved funds can be transferred to the State Development Fund. Therefore, to request for transferring the MARRIS funds to the State Development Fund runs contrary to the Government's practices in financial governance. Thus, the defendant's criticism of the plaintiff's actions for making such a request is valid;

(c) the Kedah Poverty Profile recorded low economic growth and a critical poverty rate. This gives off a view that the state government is dependent on alternative sources of funds and limited revenue collection; and

(d) during the plaintiff's tenure as Chief Minister, he frequently made controversial statements unrelated to state government. Examples of the plaintiff's statements include racial sentiments and state sovereignty eg, Penang, public disputes with public officials, on top of facing defamation suits.

[119] I will first start with the 2021 audit report. The following are the relevant parts of the MARRIS statement:

> Tapi apa yang Menteri Besar Sanusi buat? Ya, dia gunakan duit MARRIS itu untuk tujuan pembangunan yang menyalahi semua tata kelola kewangan kerajaan. Yang bercanggah dengan maksud duit MARRIS itu seperti mana yang dinyatakan dalam Perlembagaan Persekutuan ...
>
> Dan akibatnya, *audit negara, Ketua Audit Negara, menegur kecacatan dari segi pengurusan kewangan.* (Emphasis added.)

[120] For reference, the relevant paragraphs in the 2021 audit report are reproduced below in verbatim:

> 3.4. Selain itu, tiga perkara dibangkitkan dalam perenggan Hal-Hal Lain dalam Sijil Ketua Audit Negara seperti berikut:
>
> 3.4.1. Kerajaan negeri hendaklah memastikan peruntukan Kumpulan Wang Penyelenggaraan Jalan Raya Negeri diurus dan digunakan mengikut tujuan yang telah ditetapkan selaras dengan undang-undang dan peraturan kewangan yang berkuat kuasa.
>
> 3.4.2. Pungutan diperakaunkan dengan lebih teratur supaya baki Wang Tunai dan Hasil yang dilaporkan dalam penyata kewangan adalah tepat. Tindakan penyesuaian dan pelarasan perlu dibuat dengan segera terhadap unreconciled items yang telah dikenal pasti dalam Penyata Penyesuaian Bank.

[121] The plaintiff has provided much needed context on the 2021 audit report. There are two kinds of opinions in audit reports for state governments: the first, Unmodified Opinion (*Pendapat Tanpa Teguran*); second, Modified Opinion (*Pendapat Diubahsuai*). The former means the auditor was of the opinion that the financial statements provide a true and fair representation in accordance with the reconciled accounts whereas the latter means the financial statement does not show a true and fair representation, or there is a critical error such that an auditor is not able to provide an opinion. This was acknowledged by the defendant under cross-examination:

> WR: Tapi secara umumnya soalan saya adalah standard yang digunakan oleh Ketua Audit Negara membahagikan dua jenis pendapat audit. Dua jenis pendapat iaitu pendapat audit, pendapat tanpa teguran dan pendapat diubahsuai. Ini saya kira Datuk Seri setuju ya?
>
> DSN: Ya.
>
> (refer encl 50, p 148, lines 30–35)

[122] In the 2021 audit report, the Auditor-General had indeed provided an analysis that the MARRIS funds did not tally with the balance amount:

> Baki Kumpulan Wang Penyelenggaraan Jalan Raya Negeri Kedah berjumlah RM1.105 bilion merupakan baki terkumpul bagi peruntukan yang tidak digunakan sejak kumpulan wang ini ditubuhkan. Bagaimanapun analisis Audit selanjutnya mendapati baki kumpulan wang ini tidak setara jika dibandingkan dengan baki Wang Tunai dan Pelaburan berjumlah RM497.58 juta pada akhir tahun 2021.

[123] At the same time, the 2021 audit report recorded the Kedah government's response and explanation to the irregularity:

> Maklum Balas Pejabat Kewangan dan Perbendaharaan Negeri Kedah yang Diterima pada 12 Julai 2022
>
> Baki akaun Kumpulan Wang Penyelenggaraan Jalan Raya Negeri Kedah adalah baki terkumpul sejak ianya mula ditubuhkan. Sebelum tahun 2014, tiada syarat ditetapkan oleh Kementerian Kewangan Malaysia kepada Kerajaan negeri supaya membelanjakan sekurang-kurangnya 85% daripada peruntukan yang diterima. Sejak tahun 2014, Kerajaan negeri telah melaksanakan dasar yang ditetapkan oleh Majlis Kewangan Negara iaitu perbelanjaan penyelenggaraan jalan raya negeri hendaklah melepasi 85% daripada peruntukan yang diterima. Perkara ini telah dibangkitkan dalam mesyuarat Jawatankuasa Kewangan dan Hasil Negeri Kedah dan telah diputuskan supaya kajian dibuat bagi menyelesaikan isu ini.

[124] There was no comment from the Auditor-General on this statement. The defendant also did not provide an explanation in his re-examination although he said he would under cross-examination:

WR: Setuju ya. Baik. Oleh yang demikian, Datuk Seri, kenyataan Datuk Seri menyatakan bahawa dan akibatnya Ketua Audit Negara menegur kecacatan dari segi pengurusan kewangan. Saya cadangkan berdasarkan 'Pendapat Tanpa Teguran' dengan hal hal lain tadi, saya cadangkan kenyataan Datuk Seri bahawa Ketua Audit Negara menegur kecacatan dari segi pengurusan kewangan adalah satu kenyataan yang salah.

DSN: Saya tidak setuju kerana saya akan memberikan penjelasan.

[refer encl 50, p 150–151, lines 30–37, 1)

NS: Alright, berdasarkan ini sila Datuk Seri jelaskan kenapa Datuk Seri tidak setuju dengan kenyataan bahawa di Item C adalah salah dan juga tidak setuju berkenaan dengan bab pengurusan dana MARRIS?

DSN: Yang Arif, pada catatan ini dengan jelas disebut bagaimana Ketua Audit Negara menghendaki supaya Kerajaan Negeri memastikan kumpulan wang MARRIS diurus dan diguna mengikut tujuan yang telah ditetapkan selaras dengan undang-undang dan peraturan kewangan. Sangat jelas disebut hendaklah memastikan peruntukan Kumpulan Wang Jalan Negeri ini diguna mengikut tujuan. Baik, itu perkara yang dibangkitkan, juga diingatkan supaya diperakaunkan dengan lebih teratur supaya wang, baki wang tunai dan hasil dilaporkan dalam penyata kewangan adalah tepat, tindakan penyesuaian dan pelarasan boleh dibuat dengan segera terhadap *unreconciled items.* Ya, kemudian disebut juga perlu ditingkatkan kawalan dalaman terhadap pengurusan pembayaran yang menjadi punca kepada peningkatan bayaran. Ok, ini semua adalah yang saya anggap sebagai secara substantif di*highlight* dalam laporan ataupun sijil ketua audit.

(refer encl 50, p 286, lines 15–32)

[125] As seen in the excerpt, there was no substantive answer to the Auditor-General's noted response from the Kedah government. From the facts, I find that parts of the MARRIS statement citing the Auditor-General are half-truths. The defendant had omitted the part where the Kedah government had provided a reasonable explanation as to why that is the case. Based on the 2021 audit report as well, it is clear that the plaintiff's explanation that the irregularities mentioned in the report were not a result of the plaintiff's administration in his tenure but those of his predecessors as the irregular amount was undisputed to have been an accumulation from the time the MARRIS fund was set up in 1994 is acceptable and obvious. This is further supported by evidence that will be discussed in the later part of this sub-heading.

[126] On the second statement, on transferring or utilising the MARRIS funds to the State Development Fund, the following are the relevant parts of the MARRIS statement. It is my observation that this part forms a significant portion and is the eponymous topic of the whole speech:

A ... Lemah sehingga peruntukan duit MARRIS yang sepatutnya mengikut perlembagaan, mengikut undang-undang, hanya boleh menjalankan aktiviti menyelenggara jalan raya seluruh negeri Kedah. Jumlahnya [RM]1.6 bilion. Tapi apa yang Menteri Besar Sanusi buat? Ya. Dia gunakan duit MARRIS itu untuk tujuan pembangunan, yang menyalahi semua tata kelola kewangan Kerajaan.

B ... tapi bila dia menerima dana MARRIS, peruntukan tetap mengikut Perlembagaan oleh Kerajaan Persekutuan yang berjumlah [RM]1.6 bilion, dia malah menggunakan sebahagian duit itu untuk tujuan pembangunan; sepatutnya, penyelenggaraan jalan raya.

C ... dan kerana itu, dia telah meminta dengan Menteri Kewangan supaya kerajaan Kedah dibenarkan untuk memindahkan duit MARRIS kepada akaun pembangunan.

... dan kesemua ulasan oleh penasihat undang-undang termasuk penasihat undang-undang negeri menyatakan perkara itu tidak boleh berlaku.

D

[127] It is the plaintiff's submission that, at all material times, the approval request was for the purpose of reconciliation of accounts and not for the purpose of utilising the MARRIS funds for development purposes. Meanwhile, the defendant remains steadfast in his argument that the act of making such a request runs contrary to the purpose of the MARRIS funds itself.

E

[128] I refer to the Kedah government's letter to the Director of the National Budget Office dated 4 June 2023 (see encl 12, p 381–387). The relevant excerpts are as follows at pp 383–384:

F

2.3 Rekod kewangan Kerajaan Negeri Kedah tidak mencerminkan kedudukan sebenar kemampuan tunai Kerajaan Negeri berdasarkan kedudukan baki terkumpul Akaun Amanah Penyenggaraan Jalan-jalan Negeri berbanding jumlah wang tunai dan pelaburan seperti berikut:

G

(table omitted)

2.4 Meskipun angka yang ditunjukkan dalam penyata kewangan Negeri menunjukkan bahawa Akaun Amanah MARRIS mempunyai jumlah dana yang tinggi, namun begitu sebenarnya hampir semua wang itu telah dibelanjakan bagi maksud penyenggaraan jalan negeri (Projek MARRIS) dan juga menampung perbelanjaan pembangunan-pembangunan lain.

H

2.5 Akaun Amanah MARRIS telah merekodkan jumlah yang tinggi adalah disebabkan baki dana projek MARRIS yang terkumpul (akumulatif) setelah ditolak perbelanjaan yang dibuat bagi projek MARRIS melalui Kumpulan Wang Pembangunan. Sebaliknya, Akaun Kumpulan Wang Pembangunan yang direkodkan mengalami defisit pula kerana jumlah terimaan yang dikhususkan bagi maksud Kumpulan Wang Pembangunan adalah lebih rendah berbanding dengan perbelanjaan sebenar pembangunan yang lebih tinggi oleh Negeri untuk tujuan pembangunan.

I

2.6 Dalam hal ini, defisit Kumpulan Wang Pembangunan bagi pembangunan selain projek MARRIS telah ditampung dari lebihan dana Akaun Amanah MARRIS. Namun begitu, penggunaan dana Akaun Amanah MARRIS bagi maksud perbelanjaan pembangunan-pembangunan lain tidak ditunjukkan ditolak daripada Akaun Amanah MARRIS, Ini adalah kerana Akaun Amanah MARRIS hanya boleh memperakaunkan perbelanjaan bagi projek MARRIS sahaja.

[129] The excerpt clearly shows that the purpose of the request is purely accounting reconciliation. It does not indicate that the MARRIS funds were intended to be utilised. In fact, it further shows that it is an effort by the plaintiff to properly record the state's financial statements. This is consistent with the preamble paragraph under the heading of the State Advisor's Review:

4.0 ULASAN PEJABAT PENASIHAT UNDANG-UNDANG NEGERI

4.1 Bagi *maksud mengimbangi dan menunjukkan perakaunan yang betul dan terkini* di bawah Akaun Amanah MARRIS, Pejabat Kewangan dan Perbendaharaan Negeri Kedah telah memohon untuk mendapatkan ulasan undang-undang oleh YB Penasihat Undang-undang Negeri Kedah untuk *memindahkan rekod perbelanjaan* di bawah Akaun Amanah MARRIS yang berjumlah RM1,104,872,509.74 sebagai rekod wang yang dimasukkan ke dalam akaun Kumpulan Wang Pembangunan *secara perakaunan sahaja tanpa melibatkan proses formal yang lain.* (Emphasis added.)

[130] Interestingly, this interpretation of the letter was admitted by the defendant under cross-examination:

WR: Ok. Datuk Seri setuju atau tidak dengan cadangan saya? ... Cadangan saya adalah surat 26/02/2023 bukan bertujuan untuk memohon wang MARRIS, permohonan untuk menggunakan wang MARRIS untuk tujuan pembangunan. Saya ulang. Bukan untuk memohon wang MARRIS digunakan untuk tujuan pembangunan. Setuju atau tidak?

DSN: Setuju, Yang Arif kerana permohonan itu adalah untuk memindah, bukan untuk menggunakan. Saya setuju.

(refer encl 50, p 152, lines 19–27)

WR: Saya cadangkan kepada Datuk Seri, permohonan pemindahan baki terkumpul Akaun Amanah Penyelenggaraan Jalan Negeri ke Kumpulan Wang Pembangunan Negeri berkaitan isu berhubung baki terkumpul akaun penyelenggaraan jalan yang berjumlah portal RM1.1 bilion berbanding jumlah wang tunai dan pelaburan di penyata kewangan sebanyak hanya RM497 juta, bukan permohonan untuk memindahkan wang tetapi adalah permohonan untuk menyelaraskan perakaunan semata mata. Setuju atau tidak?

DSN: Setuju.

(refer encl 50, p 154, lines 22–31)

[131] Another important piece of evidence was also undisputed. PW4, the Chief Accountant of the Kedah Treasury had testified under cross-examination that the MARRIS funds were also accessed by the plaintiff's predecessors and formed commitments before the plaintiff's tenure:

> NS: So, berdasarkan keterangan sini, baki dana sebanyak RM72,748,018.39 perbelanjaan dana MARRIS ini sebahagiannya telah digunakan untuk perbelanjaan pembangunan. Betul?
>
> MZ: Sebelum Plaintif mengambil alih pentadbiran kerajaan negeri.
>
> (refer encl 50, p 56, lines 4–8)

[132] Hence, clearly it can be seen that the defendant's argument is merely a strawman fallacy. The defendant had full knowledge or did not seek to verify the truth of the matter, the reasoning of the request made by the plaintiff to MOF is only for accounting purposes, ie, reconciliation of accounts, and not to utilise the MARRIS funds contrary to its purpose. Again, I find a significant portion of the MARRIS statement specifically on utilisation of MARRIS funds for development as a half-truth.

[133] Next, I will deal with the defendant's arguments on the Kedah Poverty Profile and the plaintiff's knack of making controversial statements together as they are interlinked. The following are the relevant parts of the MARRIS statement:

> Ya. Dan biasanya, negeri yang mengamalkan perkara seperti ini adalah kerana kutipan hasil yang sangat kecil. Kutipan hasil kecil kerana *dia bermain politik, dia tak memerintah negeri. Dia bermain politik*. Jadi hasilnya sekitar [RM]470-an juta. (Emphasis added.)

[134] It is the plaintiff's submissions that factually, the plaintiff had significantly increased Kedah's revenue. However, the final accounts show a lower number because he was saddled with commitments of his predecessors.

[135] The defendant's alternative interpretation is that the state's financial management is weak or inefficient because of weak governance structures or political conflicts involving the plaintiff. Their only factual justification is the Kedah Poverty Profile (*Profit Kemiskinan Kedah*) shows low economic growth and a critical poverty rate. There was also a reliance on the 2021 audit report: it was averred that the request to transfer the MARRIS funds to the State Development Fund are indicative of issues with the state's finances including ability to collect revenue.

[136] In evidence, the plaintiff testified that he only took office in May 2020. The accumulation of improper accounting of the MARRIS funds were his predecessor's conduct and not his. He was only attempting to correct the course and properly represent the state's actual finances:

> DSS: Benda ini berlaku sebelum 2020. Saya ambil jawatan bulan Mei 2020. Benda ini berlaku sebelum 2014. Ya, bukan saya guna. Bukan kerajaan di bawah saya. Kerajaan di bawah orang lain. Saya ambil tindakan untuk membetulkan akaun supaya baki di akaun kita tidak menunjukkan masih berbaki daripada dana MARRIS itu RM1.1 bilion. Sebenarnya duit itu tak ada dah. Duit itu telah dibelanja untuk projek-projek pembangunan sebelum 2014 untuk memperbetulkan akaun. Sebenarnya patut puji saya, saya ambil tanggungjawab untuk membetulkan keadaan. Bukan fitnah saya.
>
> (refer encl 50, p 72, lines 25–33)

[137] This was corroborated by PW4, the Chief Accountant for the Kedah State Treasury:

> NS: So, berdasarkan keterangan sini, baki dana sebanyak RM72,748,018.39 perbelanjaan dana MARRIS ini sebahagiannya telah digunakan untuk perbelanjaan pembangunan. Betul?
>
> MZ: Sebelum Plaintif mengambil alih pentadbiran kerajaan negeri.
>
> NS: Yes. No. Sebelum, no. Look, read your evidence. 'Terpaksa digunakan untuk menyelesaikan perbelanjaan pembangunan yang telah dibuat komitmen'. Komitmennya adalah sebelum Plaintif mengambil alih.
>
> MZ: Itu benar. Itu tanggungan yang telah dilaksanakan sebelum Plaintif mengambil —
>
> NS: Komitmen adalah sebelum Plaintif mengambil alih. Betul? Baca.
>
> MZ: Betul.
>
> NS: Sorry?
>
> MZ: Komitmen yang telah dibuat sebelum Plaintif mengambil alih pemerintahan.
>
> NS: Ok. Tapi perbelanjaan itu, RM72 juta itu, sebahagiannya digunakan untuk menyelesaikan perbelanjaan pembangunan adalah semasa Plaintif menjadi menteri besar. Setuju?
>
> MZ: Bayaran itu komitmen yang telah pun dibuat sebelum Plaintif mengambil alih.
>
> (refer encl 50, p 56, lines 4–31)

[138] In fact, PW4 further shed a spotlight on the falsehood of the defendant's statement where he testified that there was not a decrease in state revenue, but an increase:

MZ: Tiada pindahan dibuat. Kerajaan Negeri mematuhi tatakelola dan pengurusan kewangan Kementerian Kewangan. Apa yang kerajaan negeri buat sekarang ialah meningkatkan hasil negeri. Dengan peningkatan hasil negeri, ianya akan menyumbang kepada baki tunai dan pelaburan. Ini akan mengurangkan jurang perbezaan baki terkumpul wang MARRIS di atas tunggakan ataupun cumulative akaun sejak dari tahun 1994 hingga 2020 seperti saya jelaskan sebentar tadi iaitu perbezaan sebanyak RM900 juta sebelum Plaintif ambil alih Kerajaaan Negeri Kedah.

NS: So, dalam A28, Tuan telah menyatakan bahawa kerajaan negeri kini sedang berusaha meningkatkan hasil negeri, ya?

MZ: Benar.

NS: Tuan juga nyatakan bahawa peningkatan hasil negeri akan menyumbang kepada baki tunai dan pelaburan serta mengurangkan jurang baki terkumpul akaun MARRIS. Ya?

MZ: Benar.

(refer encl 50, p 57–58, lines 32–37, 1–14)

[139] It is further damning on the defendant's case when he admitted that the 2021 audit report, a publicly available document, shows an increase in state revenue:

YBY: Saya just nak recap, ya? Itu laporan audit 2021. 398, perenggan 3.2. Datuk Seri amati ataupun saya baca dengan mudahnya. 'Pada tahun 2021, kutipan hasil kerajaan negeri meningkat sebanyak RM127.38 juta, atau 22.7% iaitu berjumlah RM688.04 juta berbanding RM560.66 juta pada tahun 2020,' ok? Saya berhenti setakat itu.

DSN: Ya.

YBY: Soalan saya, Datuk Seri nyatakan tadi dalam jawapan Datuk Seri bahawa, tidak memajukan ekonomi mampan negeri atau membawah manfaat ekonomi dalam meningkatkan hasil negeri, berdasarkan kepada perenggan 3.2 di muka surat 398 di dalam laporan audit 2021, setuju atau tidak bahawa di bawah pentadbiran Plaintif, kutipan hasil kerajaan negeri telah meningkat daripada tahun 2020 sebanyak RM127.38 juta pada tahun 2021?

DSN: Setuju.

(refer encl 50, p 172, lines 13–29)

[140] I do note that following this cross-examination, the defendant indicated this answer was qualified with an explanation and that he did not agree with being put that the plaintiff had raised the Kedah state revenue and thus, provided economic benefits. However, there was no substantive explanation during re-examination that negates this admission.

[141] Therefore, I find that the defendant had uttered false statements in this portion of the MARRIS statement. The plaintiff had credibly shown through not only contemporaneous evidence but also through witness testimony that the defendant had known or could have known through due diligence of the actual fact that the plaintiff did not cause any form of economic disparity through his political endeavours.

[142] Taking all the above collectively, it is well established that the Defendant had relied on half-truths or entire falsehood as basis of his statements and where half-truths are capable of defaming a person, which would present a completely different view to the audience if shown truthfully, are considered conduct laced with malice. On this, I find guidance and support in *Seema Elizabeth Isoy* at p 285:

> [74] In this regard, it is our view that an action of deliberately publishing a half-truth statement that presents a false impression of a person which affects the person's reputation and further expects the reader of the impugned statement to do a further search on the information is conduct actuated with malice. If the whole truth was revealed, it present a completely different complexion of the published statement when read by readers.

[143] It is trite that both justification and fair comment share the element of truthfulness being proven. Considering that none of the facts stated in the MARRIS statement by the defendant have been proven true on the balance of probabilities, neither defence is successful. This is further cemented by the finding that the facts presented by the defendant are half-truths and half-baked statements where it painted the plaintiff in an unfavourable light, indicative of existence of malice. As mentioned in the previous discussion on the REE statement, it is trite that malice nullifies any defence (see *Tun Datuk Patinggi Haji Abdul-Rahman Ya'kub*) especially when it is made in proximity of a political campaign (see *Datuk Harris bin Mohamed Salleh*).

[144] Thus, it is my finding that the defendant has failed to raise any defence against the prima facie defamation. The defendant is liable for defamation for publication of the MARRIS statement.

Damages

[145] The Court of Appeal in *MGG Pillai v Tan Sri Dato Vincent Tan Chee Yioun & other appeals* [1995] 2 MLJ 493 had succinctly reduced the principles for assessment of damages into eight considerations:

(a) the position and standing of the plaintiff;

(b) the gravity and seriousness of the libel;

(c) the mode and extent of the publication;

A (d) the mental distress, hurt, anxiety and mental anguish caused to the plaintiff as a result of the libel;

(e) the uncertainty undergone in litigation;

(f) the conduct of the defendants from the time of the libel down to the very
B moment of the verdict;

(g) the absence or refusal of any correction, retraction or apology; and

(h) the award must also be sufficient to convince any person of the baselessness of the libel and act as a necessary and sufficient signal to the
C public at large of the full vindication of the plaintiff's reputation both in Malaysia and internationally.

[146] In our present case, the plaintiff claims for general damages to the tune
D RM2.5m for both the REE statement and the MARRIS statement; aggravated damages of RM500,000; and exemplary damages of RM2m.

[147] The defendant contended that despite the two statements being published, the defendant had managed to retain his seat and his position as the
E Chief Minister. Not only that, but he also won by a majority of 16,000 votes and added eight portfolios to the State EXCO. If his reputation truly was damaged by the defendant's defamation, he would not have won the way he did. Furthermore, the plaintiff had agreed no documentary evidence was available to prove his claim for damages.

F

[148] The plaintiff argues that political success is irrelevant to the necessary legal compensation required in defamation. The main rebuttal by the plaintiff regarding this is that it is trite law that libel is actionable per se (see for example, *MGG Pillai v Tan Sri Dato Vincent Tan Chee Yioun & other appeals*). Thus, there
G is no requirement to prove actual harm. The law presumes damage occurs when a person's reputation is attacked. Also, general damages are awarded not just for compensation but to vindicate the plaintiff's good name. The plaintiff's counsels also argued that reputational damage transcends electoral success. The plaintiff contends that the defendant's argument — that the plaintiff suffered
H no loss — 'does not reflect the nature of reputational damage in a defamation case'. The damage to the plaintiff's reputation, specifically as the Chief Minister and an Islamic leader, transcends the responsibility to serve the community and affects his personality as a state leader. In essence, the plaintiff rebuts the argument by establishing that reputational damage is presumed and
I significant, regardless of subsequent political successes, which are not the metric for quantifying defamation loss. Again, I couldn't agree more.

[149] For better contextualisation in this discussion on quantum of damages, I take note of the following material facts:

(a) the plaintiff held a significant office as the Chief Minister of Kedah. His reputation is integral to his role as a public servant, what more as a politician. Damages to the reputation of such an individual can be severe (*Lim Guan Eng v New Straits Times Press (M) Bhd* [2017] 9 MLJ 622);

(b) the statements were extensive and serious. Particularly for the REE statement, media practitioners only began to characterise him as 'thief' because of the defendant's statement;

(c) there was extensive and almost instantaneous publication of both statements after being reported online, print, and through social media. Both statements underwent heavy coverage by local mainstream media;

(d) there was no apology issued by the defendant after issuing the statement despite the plaintiff calling for one. Instead, he let media practitioners run loose with the interpretation of the statement imputing the plaintiff; and

(e) the defendant had utilised his position as Home Minister, to procure public and confidential information then intentionally represented facts in both statements falsely for political gain in an election campaign.

[150] Premised on the facts and circumstances of this case, I find that it is appropriate to grant general, aggravated, and exemplary damages. General damages are awarded as compensation to the plaintiff for damage to his reputation and as vindication. Aggravated damages are awarded because the defendant's conduct aggravated the injury to the plaintiff. Exemplary damages are awarded as punishment and deterrence — it is the minimum necessary to mark the court's disapproval and effectively deters. However, for the ease of reference, the courts could also award a global sum of damages which shall cover all of these three damages.

[151] To ensure quantum is consistent with precedents, I note the following outcomes of cases with similar standing:

(a) in *Datuk Harris Mohd Salleh*, the Federal Court amended damages to a global sum of RM600,000 for compensatory, aggravated, and exemplary damages;

(b) in *Tuanku Nur Zahirah v Clare Louise Brown & Ors* [2024] 3 MLJ 735, the Court of Appeal awarded damages of RM300,000 for global damages;

(c) in *Lim Guan Eng v Ruslan bin Kassim and another appeal* [2021] 2 MLJ 514; [2021] 3 MLRA 207; [2021] 4 CLJ 155, Federal Court restored the High Court's orders of compensatory and aggravated damages of RM150,000; and

(d) in *Lim Guan Eng v Mahiaddin bin Md Yassin* [2024] MLJU 2904, the High Court awarded RM350,000 for each defamatory statement, RM150,000 for aggravated damages, and RM150,000 for exemplary damages.

[152] Accordingly, I award the plaintiff RM300,000 global damages for each of the defamatory statements.

CONCLUSION

[153] In a nutshell, this court finds that the REE statement was defamatory in its ordinary and natural meaning, by way of labelling the plaintiff as a 'pencuri' conveyed criminal wrongdoing, lowered his reputation in the eyes of reasonable persons, and exposed him to contempt and ridicule.

[154] This court rejects the defendant's defences of justification and fair comment in respect of the REE statement. The one and only key document relied upon was retracted or was never issued, and the defendant had displayed reckless indifference to the truth. Express malice is inferred from the selective presentation of half-truths and the timing of the remarks during a political campaign.

[155] This court holds that qualified privilege does not attach to the REE statement, as the occasion — an election rally — lacked any duty or common interest between speaker and audience that would protect defamatory publications.

[156] This court finds that the MARRIS statement was also defamatory, in those repeated allegations of serious financial misgovernance and contravention of funding rules by the plaintiff exceeded permissible political critique and met the threshold for defamation.

[157] It is my finding that the plaintiff had succeeded in proving defamation on both the REE and MARRIS statements. I, thus, hold the defendant liable for the tort of defamation.

[158] Accordingly, the plaintiff is awarded RM300,000 as global damages for each of the defamatory statements, and thus global damages of RM600,000 in total in order to vindicate the plaintiff's reputation, compensate his injury, and deter future misconduct. I further award the plaintiff the costs of RM70,000 as the costs for this action.

[159] Besides, as prayed by the plaintiff in para 50 of his statements of claims, I also order that:

(a) the defendant shall make an open apology to the plaintiff in the following manner:

(i) advertising for publication and/or dissemination and/or publication of a statement of apology as in minute 3(d) below in a half-page column, in one local Malay language newspaper and one local English language newspaper, within 14 days from the date of judgment;

(ii) advertising for publication and/or dissemination and/or publication by way of holding a media conference by calling all media personnel including but not limited to *TV3*, *MalaysiaKini*, *Berita Harian*, *Utusan Malaysia*, *Kosmo*, and *Sinar Harian* to read out a statement of apology as in minute 3(d) below within 14 days from the date of judgment;

(iii) advertising for publication and/or dissemination and/or publication by uploading to the Youtube Channels *Buletin TV3*, *KiniTV* and *ORAITNOPO* a statement of apology as in minute 3(d) below within 14 days from the date of judgment; and

(iv) the statement of apology must be reviewed and agreed to by the plaintiff, and among other things must contain the following sentences (with bold, italic, uppercase, underline as stated):

> that I, Datuk Seri Saifuddin Nasution Bin Ismail hereby openly apologise to (YAB and/or YB) Dato' Seri Muhammad Sanusi bin Md Nor, (Menteri Besar Kedah and/or Former Menteri Besar Kedah) for the Defamatory Statements that I have issued to him regarding my following accusations:
>
> a) That he has abused his position as Menteri Besar and Chairman of MBI to steal REE and/or be involved in REE theft and/or collude with REE theft activities, for his benefit, when I know in fact that Dato' Seri Muhammad Sanusi bin Md Nor was not directly or indirectly involved in the RRE theft at all, and there was no issue of governance on the part of Dato' Seri Muhammad Sanusi bin Md Nor; and
>
> b) That he, due to his inefficiency, has failed to manage Kedah state finances properly based on proper governance when using MARRIS allocation money amounting to RM1.6 billion for other development purposes contrary to the law and the Federal Constitution, when I know in fact that there is no issue of leakage and/or management and/or governance in the use of the MARRIS allocation money by Dato' Seri Muhammad Sanusi bin Md Nor.
>
> I hereby state clearly and unconditionally that the REE Defamatory Statement and the MARRIS Defamatory Statement that I issued on 15.07.2023 in my Ceramah in the Jelajah Perpaduan Madani Program and on 14.07.2023 in the Media Interview after the Zakat Wakalah

KDN Handover program IS A FRAUD based on fabricated and untrue facts. I confirm that the REE Defamatory Statement and the MARRIS Defamatory Statement that I made against the Defendant were ONLY POLITICALLY MOTIVATED to destroy the Defendant's rising reputation, solely for the political interests of myself, PKR and Pakatan Harapan in the PRN on 12 August 2023, even though I realise that THE DEFENDANT IS INDEED A NOBLE, PROFESSIONAL PERSON AND HAS MANAGED THE STATE OF KEDAH VERY WELL.

(b) the defendant shall cause the videos of the defendant's *ceramah* and media interviews and any videos related to the REE defamatory statement and the MARRIS defamatory statement, as will be listed by the plaintiff, to be withdrawn within 48 HOURS from the date of judgment;

(c) the defendant gives a clear and unconditional undertaking that the defendant will not upload and/or broadcast and/or publish any statement and/or video and/or media content in any form containing information and/or content that is similar and/or touches on the same issue and/or relates either directly or indirectly to the same issue as in the REE defamatory statement and the MARRIS defamatory statement that has been issued by the defendant, whether explicitly and/or implicitly and/or insinuation and/or analogy and/or satire and/or symbolism and/or language manipulation and/or otherwise;

(d) a permanent injunction to restrain the defendant and/or its agents and/or its assistants and/or its nominees and/or its employees and/or anyone under its direction and control from uploading and/or broadcasting and/or publishing any statement and/or video and/or media content in any form containing information and/or content that is similar and/or touches on the same issue and/or relates either directly or indirectly to the same issue as in the REE defamatory statement and the MARRIS defamatory statement that has been issued by the defendant, whether explicitly and/or implicitly and/or insinuation and/or analogy and/or satire and/or symbolism and/or language manipulation and/or otherwise; and

(e) interest at the rate of 5%pa on the damages above from the date of filing of this action until full settlement, which must be paid by the defendant to the plaintiff for the purpose of the plaintiff giving to any public welfare center and/or institution to be determined by the plaintiff as a charitable donation (*infaq*) to those in need.

Plaintiff's claims regarding REE statement and MARRIS statement allowed.

Reported by Dzulqarnain Ab Fatar